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THE REICHSWIRTSCHAFTSRAT: *DE MORTUIS*

HOPEFUL students of politics are still exploring the idea that political institutions based on territorial representation can be well served by an economic advisory council recruited from interest and professional groups. Despite a record of futilities and failures, the idea continues to find exponents. In its report to President Roosevelt, the National Planning Board let initial skepticism turn into optimism. The Board declared that "it may be said that these councils have not functioned actively down to this time." Nevertheless the Board thought that they had "exerted a useful influence in bringing together various interests and in inducing a general rather than a special point of view in the nation".[1] Just how this was done is not clear because the Board gave no specifications.

It would probably be extreme to say that in France the Conseil National Économique is moribund. But certainly it is not allowed to discuss any matter its views of which would embarrass the government. Some of its memoranda and recommendations are kept in its archives because their circulation might disclose the fact that the Cabinet was not proposing policies which the Council thought to be wise. At critical times the Conseil hibernates. For example, at its meeting held a week after France's alarming February sixth (1934), the Conseil confined its attention to transport. In July 1935, when

[1] National Planning Board, Federal Emergency Administration of Public Works, Final Report, 1933-34, p. 28 (Washington, 1934).

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the Laval government by décrets-lois was taking strenuous measures to balance the budget, and to control economic life, the Conseil was studying French agricultural policy.[2]

As one of his constitutional reforms, however, M. Gaston Doumergue proposed a reorganized Conseil National Économique which, along with a general statistical service and the Superior Council of National Defense, would be attached to the presidency of the Council—that is, to the Prime Minister. M. Doumergue would have given the Conseil National Économique no power of decision but it would be consulted by the government on all economic questions. "It would be free, moreover, to formulate resolutions and to make suggestions. It would also play the rôle of attempting to conciliate divergent interests." When the texts of M. Doumergue's constitutional reforms were formulated, this proposal was found to have been abandoned.[3]

In 1931, when Great Britain went off the gold standard and took stalwart measures, the Economic Advisory Council was not consulted.[4] On July 5, 1935 Mr. Baldwin told the House of Commons that the Council had not met for two years but had done its work through two main standing committees—one on economic information and the other on scientific research.[5] Little information is vouchsafed concerning the work of the Council, which is confidential. Mr. MacDonald told the House (November 11, 1930) that some of the reports were

[2] *Le Temps*, Feb. 15, 1934; July 15-16, 1935.

[3] Professor Joseph Barthélemy suggests that M. Doumergue may have wished to follow the prevailing style in political thought; that since in respect of dissolution and discipline over the functionaries his proposals savored of a reaction, he may have wished to neutralize these "by a carefully measured dose of modern perfumery". It is possible also that he wished his proposals to have some ballast which could be thrown out in case of need. Barthélemy's own view is that an organ of conciliation may be useful; but to go further than that and "to set up against a political parliament a rival parliament even when it is given no more than the power to advise is bad. It creates disorder. An economic parliament will either do nothing or it will do ill." *Valeur de la Liberté* (Paris, 1935).

[4] See Lindsay Rogers, *Crisis Government*, p. 84.

[5] 291 *House of Commons Debates* (Fifth Series), col. 2063.

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possible only because those who gave information were certain that the seal of confidence would not be broken.[6]

The American Secretary of Commerce, Mr. Roper, still worries with the Business Advisory Council of his Department. Now somewhat depleted by resignation, this Council has reached an impasse which was obvious from the beginning: if the Council disapproved of the policies of the President, should he permit it to make its criticisms public? Can the Council retain its self-respect and stay in office if it must keep its dissent to itself?[7]

Most spectacular of the bodies designed to give representation to interests was the Reichswirtschaftsrat—the German National Economic Council. For thirteen years it had a somewhat nondescript career. No one maintained that it was a real success. Many believed that it had been a failure and not a glorious one. Some thought that it showed promise.[8] The obsequies were in several stages.[9] Soon after the advent of Hitler, the Reichswirtschaftsrat suffered an injection of Nazi serum through the Law Concerning the Provisional Reichswirtschaftsrat of April 5, 1933.[10] Creeping paralysis set in.

[6] *Ibid.*, 244, col. 1466. The reports of the Council which have been published do not deal with major subjects. The Channel tunnel, diatetics, the education and supply of biologists, the control of locusts, the Tsetse fly and cattle diseases have occupied the attention of the economists along with the cotton industry, immigration and industrial development.

[7] Nevertheless Professor Herring of Harvard University believes that the Council "should not be discarded simply because of a rift among its members. Its full potentialities are as yet untested." His colleague, Professor Elliott, would have a General Economic Advisory Council formed from honorary advisers appointed by the President to represent for each department and independent establishment "all great interests with which it comes into normal contact." W. Y. Elliott, *The Need for Constitutional Reform* (New York, 1935), p. 203. There would be a demand for spectators' seats at the first meeting of such a body.

[8] Among the most optimistic was Herman Finer whose monograph on the origins of the Council and its first two years is informing and authoritative. *Representative Government and a Parliament of Industry* (London, 1923).

[9] *Cf. infra*, p. 500.

[10] This Law terminated the membership of the then existing Council and changed the Ordinance of May 4, 1920 Concerning the Provisional Reichswirtschaftsrat in numerous respects. The most important changes were the following: (a) The number of members was reduced to 60. (b) The members were appointed by the Reichspräsident upon recommendation of the

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Vitality was not regained and the death occurred on March 25, 1934. No adequate obituary notice has yet appeared in English.

The background and early work of the Council have been dealt with at length.[11] Here a summary statement will suffice as a preface to the story of the dwindling influence of the Council, its cavalier treatment by the other organs of the Reich, its gradual collapse through the issuance of Presidential Emergency Decrees in the years 1931-1932, and its abrogation by the Nazi Law of March 25, 1934.[12]

The Reichswirtschaftsrat was to exercise direct and indirect influence on Reich legislation and administration in economic matters, "to represent economic forces vis-à-vis the political state" (as if there could be such dichotomy) and to insure the communication to the government of opinions on pending legislation from men who were experts because of theoretical study or because of practical experience. The Reichswirtschaftsrat derived from Bismarck's Prussian Economic Council (created by ordinance of November 17, 1880);[13] the plan of a chamber of labor evolved by the Socialist revisionists Cohen-Kaliski-Büchel, the Wissel-v.Möllendorf governmental scheme of *Planwirtschaft;*[14] the influence of the idea of the Russian Soviet

National government; the right of economic associations to present members was abolished. (c) Members were appointed for four years; each year one-fourth of the members were to vacate their seats; reappointment of members was permissible. Fritz Poetzsch-Heffter, Carl-Hermann Ule und Carl Dernedde, "Vom deutschen Staatsleben (vom 30. Januar bis 31. Dezember 1933)", *Jahrbuch des öffentlichen Rechts* (Tübingen, 1935), vol. 22, p. 167.

[11] Inter alia, by Finer, *Representative Government and a Parliament of Industry;* Emil Frankel, "Germany's Industrial Parliament: The National Economic Council", THE POLITICAL SCIENCE QUARTERLY, vol. 37, p. 472 (1922); Lewis L. Lorwin, *Advisory Economic Councils* (Brookings Institution, 1931).

[12] *Reichsgesetzblatt*, II, 1934, p. 115.

[13] Julius Curtius, *Bismarcks Plan eines deutschen Volkswirtschaftsrats* (Heidelberg, 1919) and other literature cited by Friedrich Glum, "Der Reichswirtschaftsrat", *Handbuch des Deutschen Staatsrechts*, herausgegeben von Gerhard Anschütz und Richard Thoma (Tübingen, 1930), I, p. 579, n. 5 (hereafter abbreviated as *HdbDStR*).

[14] "The economic process directed by a single authority . . . for the benefit of the whole community according to a consciously prepared scheme, the workers having their share in management." Finer, *Representative Government*, p. 81.

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system on the radical sections of German labor; and the writings of political and economic theorists.[15] In England, the literature of Guild Socialism had little if any institutional consequences. In Germany the theorists were in part responsible for an institutional experiment.

No one has yet proposed any equitable or even intelligible method of weighting interests in an industrial parliament or a satisfactory system of choice by the interests of the representatives to which they are entitled. What is an interest? Textiles, without subdivision into cotton, wool, linen, silk, rayon?[16] How shall agriculture be divided? Shall iron, oil, lumber, and other natural resources have one vote each, or votes according to the number of representatives? Shall employers and workers be represented in the same interest group or separately? In Germany places in the Economic Council were parcelled out with attention to the census of production and economic importance of products, but the results did not escape being arbitrary.

The Provisional National Economic Council was created by Presidential Ordinance of May 4, 1920,[17] issued under the Enabling Act of April 17, 1919,[18] Concerning a Simplified Form of Legislation Regulating the Economic Transition Process. It was not the superstructure of the Council System which Article 165 of the Weimar Constitution[19] intended to build up. The intermediate structure of the Council System,

[15] Heinrich Herrfahrt, *Das Problem der berufsständischen Vertretung von der französischen Revolution bis zur Gegenwart* (Stuttgart, 1921), pp. 23 *et seq.*, 36-58, 83 n. 1, 95 n. 1; Edgar Tatarin-Tarnheyden, *Die Berufsstände, ihre Stellung im Staatsrecht und die deutsche Wirtschaftsverfassung* (Berlin, 1922), pp. 125 n. 1, 128 n. 1, 140 n. 1, 233 *et seq.*; Marcel Prélot, *La Représentation professionnelle dans la constitution de Weimar et le Conseil National Économique* (diss., Paris, 1924), pp. 27-33.

[16] Refusal to deny the insistent demands of industry for subdivision was one of the rocks on which the N.R.A. foundered. See Leverett S. Lyon, *The National Recovery Administration: An Analysis and Appraisal* (Brookings Institution, 1935).

[17] *Reichsgesetzblatt*, I, 1920, p. 858.

[18] *Ibid.*, I, 1919, p. 394.

[19] English text, e. g., in Howard Lee McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1923), pp. 208-209.

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the District Economic Council, was never instituted and even the bill of 1928 reorganizing the Reichswirtschaftsrat did not contemplate its incorporation in a Council System. Workers' Councils in single establishments were set up by law; large powers of economic control were not granted them.[20]

Despite attempts to make the Reichswirtschaftsrat a small body, it came to have 326 members drawn from ten groups.[21] The first six groups (agriculture and forestry with 68 members, horticulture and fisheries with 6 members, industry with 68 delegates, commerce, banking and insurance with 44 members, transportation and public enterprises with 34 delegates, and handicrafts with 36 representatives) consisted of equal numbers of employers and employees. Groups 7 and 8 were composed of 30 representatives of consumers and 16 representatives of officials and the liberal professions. For these groups nominations came from the great central and some regional organizations of employers (such as chambers of commerce, of industry, and of agriculture), the great trade unions, civil service groups and organizations of consumers and of the free professions. As a matter of form the delegates were appointed members of the Reichswirtscraftsrat by the Minister for Economic Affairs. Group 9 was composed of 12 nominees of the Reichsrat (assuring geographical representation); group 10 was composed of 12 nominees of the government who were nationally prominent business men or university experts in

[20] Friedrich Glum, *Der deutsche und französische Reichswirtschaftsrat. Ein Beitrag zu dem Problem der Repräsentation der Wirtschaft im Staat* (*Beiträge zum ausländischen öffentlichen Recht und Völkerrecht*, Heft 12, Berlin–Leipzig, 1929), p. 52; Hans Schäffer, *Der Vorläufige Reichswirtschaftsrat, Kommentar der Verordnung vom 4. Mai 1920* (München, 1920), pp. 12 *et seq.*

[21] As originally planned, the Reichswirtschaftsrat was composed of only 100 members. The problem of how to bring on an equitable representation of all economic forces led to a steady increase in membership. The first government draft of Dec. 4, 1919 contemplated a membership of 200 delegates. The Reichsrat effected an increase to 280 members (Jan. 31, 1920). When the draft ordinance left the Reichstag committee on Economics, the Reichswirtschaftsrat had a membership of 326 representatives and this number was taken over by the Presidential Ordinance of May 4, 1920. (Hans Schäffer, *op. cit.*, pp. 18-20.) The Reform Bill of 1928 reorganizing the Reichswirtschaftsrat—which was never enacted into statute—reduced the number again to 151.

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different fields. There was no special term of office for members.

Whereas Article 165 of the Constitution envisaged the separate alignment of employers and employees in each of the first six groups, the Presidential Ordinance sought coördination of the workers and entrepreneurs in each group in order to elicit the composite opinion of each unit. In the industrial parliament a multiplicity of disunited group opinions would be melted into the unanimous opinion of the economic world, for the latter, when dealing with the political state, would have a feeling of solidarity and act as a whole.[22] This was the beautiful theory. Such a procedure assumed that employers and employees of the same group would debate their group interests and that class conflict would recede into the background. The hope was that the worker, when he sat in an industrial parliament, would have his feelings as a co-producer triumph over his feelings as a wage-earner. It is not surprising that the scheme contemplated by the Presidential Ordinance remained a dream.

The horizontal segmentation of the industrial groups was broken down by the rules of procedure which divided the Reichswirtschaftsrat into three sections. There was a vertical grouping of employers from all the industrial groups, a similar grouping of employees, and a third section, composed of members belonging to groups 7-10 (which did not embrace employers and employees). The mutilation of the industrial group idea and the introduction of the section scheme was a victory of the politicians over the economists.[23]

Separate gatherings of employers and employees for the discussion of special questions would have been comprehensible and perhaps worth while. There was relevancy also in separate meetings of the elements making up the third section, if

[22] Glum, *Der deutsche und französische Reichswirtschaftsrat, op. cit.*, p. 43.

[23] Georg Bernhard, *Wirtschaftsparlamente. Von den Revolutionsräten zum Reichswirtschaftsrat* (Wien-Leipzig-München, 1923), p. 56. Bernhard, former chief editor of the *Vossische Zeitung*, to whose illuminating description of the Reichswirtschaftsrat the present article is indebted, was a member of the Economic Council. His version of the functioning of the Reichswirtschaftsrat is reproduced in French by Edmond Vermeil, "Le Conseil Économique du Reich", *Revue des Études Coopératives*, July-Sept. 1924, pp. 386 *et seq.*; Oct.-Dec. 1924, pp. 32 *et seq.*

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only for the purpose of acting as arbiter in disputes between the first and second sections. But all this should have been informal or at least exceptional. A permanent division into employers and employees perpetuated, and the rules of procedure sanctioned, class rivalry. The result was considerable harm to the Reichswirtschaftsrat as an institution.

Furthermore, the Reichstag political parties exercised at least an indirect influence on the labor members of the Reichswirtschaftsrat. The Social Democratic members of the Reichswirtschaftsrat held meetings to which the Social Democratic employers and members of the third section were invited. This was not necessarily in conflict with the spirit of an industrial parliament, nor did it prejudge conclusively the subject-matter under discussion in the Reichswirtschaftsrat. Conceivably the judgment of men as economists may prevail over their judgment as members of a party. But the voting in the industrial parliament was by sections and there the threat of the party whip was not always absent. Manifestly it should be the ideal of any industrial parliament to shift discussions concerning social-political questions over to the domain of economic-political considerations where they can be treated by employers and employees jointly. Compromises are imperative; political prejudices should be checked. But in the Provisional Reichswirtschaftsrat employers and employees opposed each other as two classes. The procedure encouraged employers and employees to forget that "every human benefit and enjoyment, every virtue and every prudent act is founded on compromise and barter." They repeated their votes in the groups—the rules of procedure prescribed voting by groups upon demand of one group or of the government—as they had already been recorded in the sections. Thus there was difficulty in the way of an expression by a vocational group of its uncolored opinion —and in the eliciting of such an opinion the government should have been primarily interested. Hence the very warp and woof of the system became distorted.[24] After 1923 voting by groups took place only for the election of committee members.

[24] Georg Bernhard, *op. cit.*, pp. 59-61.

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One consequence of the labor-capital division was increased influence for the third section. This section had a secure position because the government had given it one-third of the seats in the committees—considerably more than it was entitled to on the basis of numbers. It was thus in a better position to attempt to bridge the differences between sections I and II and to act as an arbiter. Without section III, sections I and II would have deadlocked.[25] Because of the aleatory voting of section III, however, the fate of a measure could not be predicted. The tendency of the group-division to become less important than the inter-division was so thoroughly stabilized that the contemplated bill of 1928 reorganizing the Provisional Reichswirtschaftsrat and giving it final legal form[26] expressly provided for a division into three sections. Thus the Reichswirtschaftsrat was set up so as to accentuate the divergent interests of employers and employees. That at best is unfortunate. At worst, it is fatal.

Another important problem in an industrial parliament is the relationship between the plenary assembly and its committees. It is impossible to discuss details of a bill in an assembly of 326 members. Even more than a political parliament, an industrial parliament requires committees to go into the minutiæ of a proposal. But a political parliament "deliberating" upon legislative projects and an industrial parliament formulating an "expert" advisory opinion are quite different. In a political parliament, a reverberating forum, approach to demagogy is unavoidable; differences of political philosophy determine the policy of the individual parties and members. In a thought-organization, such as an industrial parliament should sometimes be,[27] cold examination, sober deliberation and

[25] Working-class members of the Reichswirtschaftsrat complained that the decision of section III was often given to the employers who pleased the consumers by their insistence upon free competition in industry. Entrepreneurs in the Reichswirtschaftsrat complained that the composition of section III favored the labor element contained in section II. Assaults from extremes suggest that the section assaulted is in the middle-of-the-road and not altogether biased.

[26] *Cf. infra*, p. 498.

[27] Graham Wallas, *The Great Society*, ch. xi, "The Organization of Thought" (New York, 1914), pp. 235 *et seq.*

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calm judgment should govern in matters of technical subtleties. If they do not, what is the *raison d'être* of the economic chamber? But to expect a large body of men, although they have a keen general interest in economics, to consider as a body diverse matters of an extremely specialized nature is to demand too much of human nature. Inevitably, attendance at a plenary sitting falls off. Boredom and indifference result. And in the eyes of the public, the mantle of prestige becomes more transparent as the assembly empties.

Moreover, if discussions of economic problems by persons directly concerned are to be worth while, some phases must be kept confidential. Secrecy is not possible in a large body. Managers of industrial undertakings or labor leaders cannot be expected to make frank statements if they know that their every word may be quoted against them. That is true also of bureaucrats. How, then, could a plenary assembly made up of specialists, in theory at least not guided by party whips as are the members of a political parliament, pass intelligent judgment on matters the data concerning which they possessed only in diluted form because explanations of government officials or the testimony of experts were withheld from them?

It was clear almost at once, therefore, that the real work of the Reichswirtschaftsrat had to be done in committees. There were two principal committees each composed of thirty members and thirty substitutes, to deal with economic-political and social-political matters. In a number of cases, the powers of the Reichswirtschaftsrat were delegated to these two committees. Among other committees, the finance-political committee, although not endowed with special prerogatives, occupied in practice the same rank as the two main committees.[28] The sittings of these committees were private, but each committee, by a two-thirds majority could decide to make certain matters public. All members of the Reichswirtschaftsrat were admitted as spectators to committee meetings, provided these meetings were not declared to be confidential.

[28] Another important committee was the committee on constitution which prepared the Reform Bill of 1928 with a view to giving definite shape to the organization of the Reichswirtschaftsrat.

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The main business of the committees was to hear testimony given by experts. In the Reichstag, committees seldom examined specialists;[29] in the Reichswirtschaftsrat, it was a steady practice. The testimony of experts was not given before the whole committee of thirty members but before a subcommittee formed especially for the purpose. In result, the subcommittee took on great importance.

Membership in these committees like membership in the Reichswirtschaftsrat was continuous. Members were eager to obtain seats on the committees, and in the early years attendance was good. Soon, however, their zeal abated. Even the summoning of substitute members did not at times suffice to get a quorum. Sometimes, therefore, non-committee members of the Council were brought in. The committees were in session all year around; their members were the leaders of an illustrious assembly. Many fruitful minds in the economic world could not be induced to stand for election to the Reichstag. On the other hand, many leaders in industry and commerce were willing to be chosen as representatives of their economic organizations.

As time went on, it was shown that for objective, quantitative work the full assembly was useless. Members in the full assembly began to speak to their constituents beyond the walls; political attitudes of mind cast out objectivity; speeches, yielding to emotions of class ideology, assumed declamatory flavor.[30] After June 30, 1923 no sitting of the full assembly took place. The bill of 1928 reorganizing the Provisional Reichswirtschaftsrat took cognizance of this development: it provided for committees primarily, and contemplated a meeting of the full assembly only as an exceptional event.

A legislative chamber based on economic interest is an allegation of the inadequacy of political representation. Naturally, therefore, the Reichswirtschaftsrat inspired some jealousy in the minds of the Reichstag's members. At times the jeal-

[29] Georg Bernhard, *op. cit.*, p. 66.

[30] Max Hachenburg, *Lebenserinnerungen eines Rechtsanwalts*, p. 330. See, e. g., *Stenographische Berichte des Vorläufigen Reichswirtschaftsrats*, 56th sitting of March 23, 1923, pp. 2740 *et seq.*, with regard to debates on hours of labor.

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ousy became corroding. During the deliberations upon the organization of the Reichswirtschaftsrat, the Reichstag was bent upon narrowing down the powers of the Economic Council. The political parliament did not wish to create a rival which might challenge its authority. In later years, the Reichstag's jealousy increased. The Reichstag feared that when powerful and wealthy economic circles began to realize that their interests could be promoted by another institution, they would reduce their contributions to the political parties.[31] In financial matters, the Reichswirtschaftsrat was of course at the mercy of the Reichstag, which, forgetting its own short rations under the imperial régime, curtailed the privileges of the members of the Reichswirtschaftsrat in respect of free transportation over the German railway system.[32]

There was no direct link between the Reichswirtschaftsrat and the Reichstag. The channel of communication was the government. The Reichswirtschaftsrat had the constitutional right to demand that socio-political and economic bills of fundamental importance before their presentation to the Reichstag should be submitted by the Cabinet to the National Economic

[31] Georg Bernhard, *op. cit.*, pp. 79-81.

[32] The Reichswirtschaftsrat members living in Berlin received a daily compensation of RM.10.–, those living outside of Berlin received RM.30.–. The railway transportation privilege was unrestricted only for members of the main committees. Glum in *HdbDStR* I, p. 585 n. 11; *Der Vorläufige Reichswirtschaftsrat 1927-1932*, herausgegeben von dem Büro des Vorläufigen Reichswirtschaftsrats (Reichsverlagsamt, 1933), p. 7 n. 1 (an official publication containing a very extensive bibliography on pp. 321-350). The latter volume and the one which precedes it, *Der Vorläufige Reichswirtschaftsrat 1920-1926, Denkschrift verfasst von Dr. Hauschild* (Berlin, 1926), with bibliography on pp. 641-670, contain chapters giving a general survey of the functioning of the Reichswirtschaftsrat, the work done by committees, a symposium of opinions concerning the Reichswirtschaftsrat, and an excellent bibliography.

Other official publications are: *Stenographische Berichte über die Verhandlungen des Vorläufigen Reichswirtschaftsrats*, covering the sittings of the plenary assembly and ending with the 58th sitting on June 30, 1923. *Mitteilungen des Vorläufigen Reichswirtschaftsrats* were bulletins of information, periodically distributed, to inform members what had happened in the affairs of the Reichswirtschaftsrat and, particularly, in its committees; they also recorded changes in membership and announced sittings. *Drucksachen des Vorläufigen Reichswirtschaftsrats* contained drafts of bills proposed by the Council. The Council had archives and a library. The German university seminars in Economics received copies of the *Mitteilungen* and *Drucksachen*.

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Council. But the government decided the question of what was fundamental and important. For instance, in the early history of the Reichswirtschaftsrat the Finance ministry was remiss in sending bills to the Council; the assumption was that finance bills were not socio-political or economic bills. The only thing which the Reichswirtschaftsrat could do was to question the government as to why a certain bill was not submitted to it.[83] Since the Cabinet was responsible only to the political parliament this control was by no means effective.

The Reichstag treated the written opinions of the Reichswirtschaftsrat with disdain. On some occasions the Reichswirtschaftsrat's work, though it had been amply discussed and thoroughly thought out, was thrown into the dust-bin by the political parliament.[84] Sometimes elaborate procedures with regard to taking expert testimony gone through by the Reichswirtschaftsrat were repeated by the Reichstag. For example, in the summer of 1925 the Reichswirtschaftsrat heard about forty experts concerning customs duties. Yet the Reichstag, in one of its committees, went over the same ground.[85] Only in matters which were highly technical and did not go counter to principles which the Reichstag approved did the Council have influence.[86] Since reports, however vivid, need oral argu-

[83] Georg Bernhard, *op. cit.*, p. 89; a "question" had to be supported by ten members, *Der Vorläufige Reichswirtschaftsrat 1920-1926*, p. 6.

[84] "When one reads the opinion of the Reichswirtschaftsrat and compares it with the first government draft and the present bill concerning simplification of the tax system, one is permitted the question: 'Why do we have a Reichswirtschaftsrat at all?' The Reichswirtschaftsrat rendered an elaborate opinion on a subject of grave concern to every taxpayer inasmuch as the bill aims at lightening his burden, but nobody deems it necessary to refer to the report. If I were a member of the Reichswirtschaftsrat, I would be conscious of superfluity." Dr. Rademacher, German Nationalist deputy, in the 33rd Reichstag sitting of Jan. 25, 1929, *Verhandlungen des Reichstags, Stenographische Berichte*, vol. 423, p. 879 (B, C).

[85] Konrad Gesch, *Der Reichswirtschaftsrat* (diss., Erlangen, 1925), p. 20.

[86] Finer, *Representative Government*, p. 161; e. g., the Law on the Autonomy of the Reichsbank was treated with objectivity by the Reichstag on the strength of an opinion rendered by the Reichswirtschaftsrat. It was an exceptional event when the commercial political committee of the Reichstag resolved on Jan. 29, 1930 to await the report of the Reichswirtschaftsrat before proceeding with its deliberations. *Der Vorläufige Reichswirtschaftsrat 1927-1932, op. cit.*, p. 20.

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ments to support them, the Reichswirtschaftsrat requested permission to send representatives to the Reichstag so that its work might be presented with efficacy. The Reichstag refused; but occasionally the Cabinet came to the assistance of the Reichswirtschaftsrat and circumvented the distaste of the Reichstag for the industrial parliament's superior expert knowledge by appointing Council members in whom it reposed particular confidence as governmental commissaries with the mission of representing it in the Reichstag's committees.[37]

The Reichstag's attitude towards the Reichswirtschaftsrat was mirrored in the ill-will of government departments. Cabinet members were parliamentarians in many cases; they were responsible to the Reichstag only; they could treat the Reichswirtschaftsrat with impunity as a *quantité négligeable*. Good relations existed with only one ministry: that for Economics. This was understandable, for the Reichswirtschaftsrat had started out as an economic body attached to this department, which drafted the bills concerning the definite structure of the Council and in a sense remained its guardian angel throughout.

The ordinance of May 4, 1920 regulated the collaboration between the Reichswirtschaftsrat and the government in such a manner that national governmental representatives were admitted to all sittings of the Reichswirtschaftsrat and the meetings of its committees and could speak at any time. The Länder also were empowered to send delegates in order to expound regional viewpoints on measures under discussion. The Reichswirtschaftsrat could request the presence of governmental representatives but, in contrast to the Reichstag, it could not insist on the presence of the Chancellor or a Cabinet minister.[38] As a matter of fact, however, it was more impor-

[37] Georg Bernhard, *op. cit.*, p. 87; *Der Vorläufige Reichswirtschaftsrat 1927-1932, op. cit.*, p. 19.

[38] Occasionally, the Chancellor in power or a Cabinet minister, even the Minister of Foreign Affairs, used the forum of the Reichswirtschaftsrat as a hall of echoes for important messages which should reach beyond its walls. *Cf.*, e. g., *Stenographische Berichte über die Verhandlungen des Vorläufigen Reichswirtschaftsrats*, 3rd sitting of July 22, 1920, pp. 32 *et seq.*; 4th sitting

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tant to have permanent officials appear before the Reichswirtschaftsrat because they were better equipped, in most cases, to deal with the matters in hand than were the ministers who were amateurs.

Fulfilment or non-fulfilment of the constitutional obligation of submitting economic bills and ordinances to the Reichswirtschaftsrat was a criterion of the attitude of a ministry toward the Council. We have already referred to the attitude which the ministry of Finance took toward the Reichswirtschaftsrat. The ministry of Posts and the ministry of Traffic did not consult the Council, even in important questions concerning the organization of their departments. Such governmental departments, in close daily contact with the broad masses of the population, were interested in having their sometimes unpopular measures endorsed by experts, but they were able to barricade themselves against public criticism without using the Reichswirtschaftsrat. The war had taught the method of advisory bodies attached to individual ministries. In the meetings of these advisory bodies, to which representatives of the press were invited, grievances were voiced. But the criticism was controlled and it cooled the temperature without seriously embarrassing the government. Here is an explanation of departmental unwillingness to have the crust of custom broken by an intruding body of experts which claimed constitutional rights to scrutinize all proposed legislative and administrative measures concerning economics and finance.

In some cases tension between departments and the Reichswirtschaftsrat was eased by compromise. The Reichswirtschaftsrat was granted the privilege of appointing a certain number of delegates [39] to the special advisory bodies at-

of July 24, 1920, pp. 86 *et seq.*; 12th sitting of Feb. 24, 1921, pp. 504 *et seq.*; 17th sitting of June 8, 1921, pp. 756 *et seq.*

To the sittings of the Conseil National Économique not only the ministers, but also the committees of the Chamber and the Senate may send representatives; on the other hand, the Conseil National Économique may send delegates to competent committees of the Chamber and the Senate (art. 13 of the *décret* of Jan. 16, 1925, *J. O.*, Jan. 17, 1925, pp. 699-700).

[39] Occasionally advisory bodies were formed by statute and attached to certain departments; in other instances, ministries set up advisory bodies at their own discretion. These advisory bodies had delegates of the Reichswirtschafts-

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tached to certain ministries. This permitted at least a limited number of Council members to give their expert advice. The ministry of Finance, whose attitude was hostile, did not draw on the Council members for the scrutiny of its projects but called in specialists of its own choosing. In later years, however, it condescended to submit drafted bills to the Council. Such a *chassé-croisé* of experts offended the amour-propre of the Council members, increased the fees paid to specialists, and was not conducive to a coördinated, well-planned survey of the whole range of economic activity.

> We talk of the Minister, we see him before us, and we think of him as the devil of the piece, but we know that he really is not. We know that he is merely the brocaded porter at the entrance of the cinema, that the picture palace is behind, and that there are . . ., concealed behind the term "the Minister", . . . permanent officials with all the powers of a dictator, though without the title.[40]

That was said of the British civil service, but it is no less true of ministers and permanent officials in Germany. The parliamentary régime permits and even invites ministers who in most cases are amateurs without technical knowledge of the business of their departments. Consequently, the technical matters must be attended to by the higher department officials. The higher German civil service officials were brought up in the old Prussian school for government employees. The Prussian bureaucrat was well educated; he was no *cul-de-jatte intellectuel.* Thoroughness, bred into the bone of the civil servant by long service, was a characteristic brilliantly displayed by many reporting officials (*Referenten*) who understood how to master complicated economic questions. In fact, the expert by study handled his particular field in which he drafted bills for proposed legislation with such skill that he frequently

rat among their members. A list of these advisory bodies in both categories is given by Glum in *HdbDStR* I, p. 580 n. 6; see also *Der Vorläufige Reichswirtschaftsrat 1927-1932, op. cit.*, pp. 295-298.

[40] Colonel Wedgwood in 1929 during the discussions of the English Local Government Act, 224 *H. C. Deb.* (Fifth Series), col. 982.

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evoked the admiration of the expert by practice and found unstinted appreciation of the value of his work in the Council.[41]

These permanent officials were centers of power; their stellar rôle would be challenged if another body of experts became important. Hence, the hostility which radiated from the departments was often traceable to officials rather than to the ministers. Moreover, a frequently overworked bureaucrat did not relish the idea of having more work piled upon him. Apart from consultations with the permanent undersecretary and minister, the official was at the beck and call of the committees of the Reichstag and Reichsrat. Why should he be willing to have a third master—the Reichswirtschaftsrat? Why should he wish to fight for the clauses of his own draft of a measure in a third parliamentary chamber?

On the whole, the Reichswirtschaftsrat and the Reichsrat got along well. Members of the Reichsrat were mostly officials of the Länder to whom political expediency was not all-important. The Reichsrat treated the Council with respect and took an interest in its work. To be sure, the Reichsrat sometimes disposed of important measures without consulting the Reichswirtschaftsrat, but such a procedure was wholly exceptional. Frequently the Reichsrat specifically based its deliberations upon preliminary work done by the Reichswirtschaftsrat. In a few instances, the Reichsrat even adjourned its discussions in order to obtain the benefit of the Council's opinion,[42] and made frequent use of its constitutional right of sending delegates to the Council's deliberations. This contact stimulated the interest of the Reichsrat in the Council's activities and persuaded it to permit the direct impact of the Council's expert opinion upon its legislative and administrative work.

Suggestions were made that the Reichswirtschaftsrat and Reichsrat committees be joined so that the parliamentary machinery would be simplified. Advocates of a powerful second chamber in the German legislative system excogitated schemes for a merger of Reichswirtschaftsrat and the Reichs-

[41] Georg Bernhard, *op. cit.*, p. 93.

[42] *Ibid.*, p. 96.

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rat.[43] But these much-debated amendments to the Weimar Constitution do not concern us here.

Public interest in the activities of the Reichswirtschaftsrat gradually became less keen. Conditions beyond control of the Reichswirtschaftsrat cut down its functions. Under governmental pressure, and for the sake of economy, the Council agreed in 1923 to refrain from initiating discussions and inquiries save after approval of the project by the government. One of the Council's constitutional functions was thenceforth eliminated. In 1930, on the occasion of the Council's tenth anniversary, the press considered the Council's work important enough to devote to the occasion flattering editorials dealing with the diligence and high value of the opinions of the Reichswirtschaftsrat.[44] No doubt, the Reichswirtschaftsrat had endeavored faithfully to perform the tasks assigned to it by the Weimar Constitution and the Presidential Ordinance of May 4, 1920, but it did not grow into the constitutional stature originally outlined. As events proved, the panegyrics in June 1930 were *ante mortem*. Soon the press contented itself with publishing only summaries of the Council's opinions. This was an index of the public's diminishing interest in the Council's work.

On July 14, 1930 the Bill Concerning the Final Structure of the Reichswirtschaftsrat[45] failed of adoption by the Reichstag by a constitutionally required two-thirds majority.[46] The salient points of this bill have already been referred to: the reduction of the members to 151, the segregation into sections, and the increased importance of the committees over the plenary assembly. Furthermore the bill contemplated conferring the right of bringing proposals of an economic nature before the Reichstag even against the will of the Cabinet, a

[43] Georg Bernhard, *op. cit.*, pp. 98-100.

[44] *Der Vorläufige Reichswirtschaftsrat 1927-1932, op. cit.*, pp. 255-256.

[45] First reading, Nov. 27, 1928, *Verhandlungen des Reichstags, Stenographische Berichte*, vol. 423, pp. 488 *et seq.*; second reading, July 4, 1930, *ibid.*, vol. 428, pp. 6158 *et seq.*; third reading, July 12 and 14, 1930, *ibid.*, p. 6328 and pp. 6357-6358. *Reichstag Drucksache* 348/1928 (vol. 430); 2163/1930 (vol. 443).

[46] *Verhandlungen des Reichstags, Stenographische Berichte*, vol. 428, pp. 6361-6366.

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right which the Provisional Reichswirtschaftsrat did not possess under the Presidential Ordinance of May 4, 1920. In a parliamentary régime such as the Weimar Constitution intended to set up, this innovation would have remained devoid of practical value, as the Reichstag majority would not have disavowed its committee, the Cabinet. The bill also established panels of experts to be associated with the Council as non-permanent members and to be drawn upon if occasion demanded.

The German Nationals and allied agricultural groups voted against the bill because they wanted to make a reorganization of the National Economic Council part and parcel of a thoroughgoing constitutional revision. The Right, hostile to universal equal suffrage, held to the conception of estates and vocational or group representation. When the French Right could not agree on a king, it wanted to form the presidency in the mould of kingship; "*nous faisions un civet*", said Laurier in 1873, "*voilà que le lièvre s'échappe; il nous reste un lapin; faisons une gibelotte*". But in 1930 the German Right found the rabbit-stew as served up in the Bill Concerning the Final Structure of the National Economic Council too unsavory to take the place of the hare-ragout of a parliament representing medieval estatism. The Nazis took an apathetic attitude in the matter. To the Communists the Reichswirtschaftsrat was anathema. The Bavarians, and the Economic party (whose vote was decisive) could not be reconciled to the proposed distribution of 151 members among the interested groups.[47] Thus the Reichswirtschaftsrat, never divested of its provisional character, faced the end in the original form in which it was set up under the Presidential Ordinance of May 4, 1920.

The years 1931 and 1932 witnessed the "apocalyptic ride of the dictator" through German lands. It was a period of convulsive, agitated, "permanent" governance on the basis of Article 48 of the Weimar Constitution.[48] The Republic was

[47] Glum in *HdbDStR*, I, p. 578 n 1A. The Noes were 162 and the Ayes (Socialists, Center, Democrats, and part of the German People's Party) were 234; two members abstained from voting.

[48] On presidential emergency ordinances under Article 48 see Lindsay Rogers *et al.*, "Aspects of German Political Institutions, II: Article 48", THE POLITICAL SCIENCE QUARTERLY, Dec. 1932.

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crumbling. Henceforth, most important measures of an economic and socio-political nature were taken without the Reichswirtschaftsrat being consulted. The national government formed independent advisory bodies, particularly an advisory body in economic affairs attached to the presidency and a commission to combat unemployment. Disregarding these blows at its prestige, the Council did not resign but continued to seek something to do. The Council's delegates visited antechambers of the chancellery and ministries and asked to be consulted. Governmental representatives tartly told the petitioners that, in view of the shelving of the Reichsrat and Reichstag as organs of the state, the dictatorship could not consult the Council with propriety.[49] The Council had instituted a central committee of fifteen members and it brought the existence of this new committee to the attention of the government as a standing body ready for continuous and instantaneous consultation (Nov. 6, 1931). Only the ministry for Economic Affairs broke a lance for its pet, the Council, by addressing a circular letter (Dec. 24, 1931) to the other departments urging them to make use of the expertness of the Council when drafting their bills. In order to show that it was not in a comatose condition, the Reichswirtschaftsrat published a report on unemployment which was well received.[50] During 1932 the Council approached the various governmental departments on several occasions with a view to being called in as a consultant, at least in the drafting of executory ordinances to laws of an economic nature.[51]

On January 11, 1933 the members of the Council's bureau had a conference with General von Schleicher. That soldier-politician had appreciative words for the Council's work in the past and promised that in the future he would endeavor to rely upon it.[52] But the General did not realize that the sands were running low in his own glass of destiny. The creation of the Third Reich inevitably meant that the Reichswirtschaftsrat

[49] *Der Vorläufige Reichswirtschaftsrat 1927-1932, op. cit.*, p. 21.

[50] *Cf.*, e. g., *Berliner Tageblatt*, March 21, 1932.

[51] *Der Vorläufige Reichswirtschaftsrat 1927-1932, op. cit.*, pp. 20-21, 255-256.

[52] Reichswirtschaftsrat, *Mitteilungen*, January 15, 1933.

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would be no more. A dictatorship must pretend to an omniscience which the populace might doubt if the dictatorship admitted its need of advice and set up an advisory council. It was natural, therefore, that the Vorläufige Reichswirtschaftsrat was buried by the Nazi Cabinet Law of March 25, 1934.[53] As the distinguished jurist Herr Baumbach declared, it was, with little ado, "cast into the limbo of oblivion. The Weimar Constitution had provided for it by Article 165 as a link in the council system. Labor councils should meet representatives of entrepreneurs and of other strata of the population in district councils; the Reichswirtschaftsrat was supposed to be the apex of the pyramid. It sounds like a fairy tale. The Reichswirtschaftsrat never had any real influence. An organ with no power behind it, which rendered only opinions and could make no decisions, was brushed aside. The Reichswirtschaftsrat was a symbol of the compromise character of the Weimar Constitution." [54]

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[53] *Reichsgesetzblatt*, II, 1934, p. 115.

[54] *Deutsche Juristen Zeitung*, 1934, p. 536.

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INTERSTATE COMPACTS AND SOCIAL LEGISLATION *

EVEN before the Supreme Court in the Railroad Retirement Board [1] and N. I. R. A. decisions [2] had canalized overflowing federal power within strict constitutional channels, contemporary interest had been aroused in the potentialities of interstate compacts as devices midway between federal and state control. Long before these decisions, voices had been raised to urge the adoption of other arrangements to supplement existing N. R. A. codes [3] or to replace them in the event that the national codes were superseded. It had even been suggested that the interstate compact is the most promising of the devices.[4] When the judicial axe finally fell on the N. I. R. A. and its codes, increased attention was immediately turned to the possibility of accomplishing through the

* This material is part of a study on Federal-State Coöperative Devices in Social Legislation now in course of preparation under a grant from The Council for Research in the Social Sciences.

[1] Railroad Retirement Board v. Alton R. Co., 55 S. Ct. 758.

[2] United States v. A. L. A. Schechter Poultry Corporation et al., 55 S. Ct. 837.

[3] *Cf.*, for example, *Letter from Hon. Frances Perkins, Secretary of Labor, to Senator Henry Parkman, Jr.* . . . Sept. 12, 1933, *First Report to the General Court of the Commission on Interstate Compacts Affecting Labor and Industries*, Jan. 1934, Mass., pp. 58-60; *Letter from President Roosevelt to Governor Winant* . . . May 25, 1934, *Interstate Compacts in the Field of Labor Legislation*, New Hampshire Commission on Interstate Compacts Affecting Labor and Industries, Jan. 1935, pp. 30-31.

Title I of the Minimum Wage Compact, signed May 29, 1934, states:

"*Whereas*, The advantages of such uniform standards have already been indicated by the operation of the National Industrial Recovery Act and the codes of fair competition adopted thereunder; and

Whereas, Such operation points to the desirability of continued uniform legislation affecting labor standards, by federal action or otherwise, and of joint action by the States to establish such uniform standards. . . ."

[4] Wyzanski, C. E., *Interstate Compacts and NRA Codes*, unpublished address given at Conference on Interstate Compacts, May 29, 1934, Concord, N. H.

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compact what national action was no longer allowed to attempt.[5]

But this was only one of the numerous situations for which interstate compacts recently have been suggested or undertaken. To many of their advocates they are potentially coterminous with the entire range of possible legislation. To the advocates of decentralization they are a kind of intermediate arrangement which avoids the centralizing tendencies of federal regulation, whereas the advocates of centralization consider compacts a basis for possible evolution of control from the state to the region and then from the region to the nation. It has even been suggested that if the potentialities of the compact continue to be developed "it may result in a finer balance of power between the states and the nation".[6] Whether or not a compact is all things to all men, at least its former limited application to the settlement of such problems as disputes over boundary and cessions of territory has given way to a new and positive rôle. Inherent in this rôle is an emphasis on the possibility of utilizing compacts for flexible adjustment of governmental services which may fall into the numerous interstices between federal and state government, the twilight zones where either or both may travel, or the no man's land where neither the one nor the other may venture. Fluctuating now in the field of state, or now in the field of federal action, or again excluded from either, is social legislation, and so compacts have been suggested for its development. They have been inaugurated or advocated to obtain interstate coöperation for apprehension of criminals, for joint police activity, for control of acts committed so near the boundary of a state as to make it uncertain whether either the doer or the effect is within the state, for supervision of probationers and parolees,[7] for de-

[5] *Cf.*, for instance, *New York Times*, May 29, 1935, pp. 1 and 15, "States Plan Urged to Keep NRA Wages"; *idem.*, June 2, 1935, p. 7, recommendation of Congressman O'Conner; *idem.*, June 5, 1935, p. 2, "14 States in Move for NRA Salvage".

[6] II *Recent Social Trends*, p. 1475.

[7] *Cf.* 48 Stat. L. 908, Ch. 406; Dean, G., "The Interstate Compact—A Device for Crime Repression", I *Law and Contemp. Probs.*, Oct. 1934; Merriam, C., *The Government of the Metropolitan Region of Chicago*, p. 164; *New*

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velopment of joint correctional institutions, universities and medical centers,[8] building of standards of safety in such industries as coal mining,[9] expansion of uniform labor legislation among the northeastern states,[10] control of the products of prison labor,[11] establishment of an interstate authority for unemployment insurance,[12] regulation of problems of interstate sanitation in New York harbor,[13] establishment of a regional health authority in the Chicago region,[14] interstate control of the sale of alcoholic beverages,[15] attainment of uniformity in state conservation laws,[16] or development of interstate parks.[17] But the possibilities are almost inexhaustible.

The administrative and constitutional problems involved in these widely varying situations are so numerous that they are indeed divergent in all but the fact that they affect social as

York Times, Dec. 12, p. 2, and Dec. 13, 1934, pp. 1, 11; New York State Conference on Crime, Sept. 30–Oct. 3, 1935, and New Jersey Crime Conference Oct. 11-12, 1935. *Cf. State Government*, November 1935, whole issue, and XXI *American Bar Ass'n Journal*, pp. 696-7, for detailed discussion of the proposals.

[8] *Report of the Committee on Interstate Compacts of the Commission on Uniform State Laws*, 1931, p. 10.

[9] Lee, F. P., "Possibilities of Establishing a National Minimum of Safety in the Coal Industry", XIV *Amer. Labor Legis. Rev.*, Mar. 1924, p. 79.

[10] *Cf.* Minimum Wage Compact, *supra*, note 3; S. Bill 3351, 74th Cong., 1st Sess. This bill had been introduced before. *Cf.* H. J. Res. 267, 73d Cong., 2d Sess.; First, Second and Third *Reports of the Commission on Interstate Compacts*, Massachusetts, 1934 and 1935; *Interstate Compacts*, etc., *op. cit.*, New Hampshire, 1935.

[11] Compact of Fair Competition for the Prison Industries of the United States of America, approved April 19, 1934.

[12] Perkins, F., letter, *op. cit., supra*, note 3; "An Interstate Authority for Unemployment Insurance", *Survey*, Aug. 15, 1933. The passage of the Social Security Act, Public No. 271, 74th Congress, still leaves the possibility open, at least in so far as employees moving from one state to another are concernd.

[13] Compact adopted Sept. 21, 1935.

[14] Steadman, R. F., *Public Health Organization in the Chicago Region*, p. 264.

[15] Donovan, W., "State Compacts as a Method of Settling Problems Common to Several States", LXXX *Univ. of Penna. Law Rev.*, p. 15.

[16] Secretary Wilbur's letter to the governors of 10 states, *New York Times*, April 11, 1931, p. 5.

[17] Merriam, C., *op. cit.*, p. 166.

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well as individual welfare. But more than that, they are all so acutely responsive to changing social and economic conditions that all necessitate the constant availability of expert technical knowledge and all demand flexible and detailed control such as may be secured only through the use of administrative rules and regulations fitted into a broad but definite framework of legislation. It is not, of course, possible to generalize in advance concerning the applicability of an interstate compact to all the situations inherent in a program of social legislation, for the usefulness of the device in handling a given problem depends in the last analysis on a careful examination of each specific issue. Furthermore, it is not possible to argue too closely from past applications of compacts to particular sets of circumstances, for the same sets of circumstances do not repeat themselves identically. Disputes concerning water rights present different problems from those concerning interstate rendition of criminals or the establishment of minimum standards of labor law among competing states. Nevertheless, a re-examination [18] of the device in regard to its flexibility and adaptability in handling such problems, may shed some flicker of light on the administrative and constitutional possibilities of the compact in regard to at least the common requirements of a program of social legislation.

If an interstate agreement is built more firmly into the legislative structure than unilateral or reciprocal state action, may changing conditions bring in their wake the necessary modifications in state legislation and administration? In other words is a state participating in a compact bound immutably and irrevocably as Governor Hoffman of New Jersey indicated in his warning to the delegates of the Interstate Conference on Labor Compacts in June 1935 "not to rush wildly into those

[18] For important earlier discussions of interstate compacts, *vide* Bruce, W., "The Compacts and Agreements of States with One Another and with Foreign Powers", II *Minn. L. Rev.* 500; Donovan, W., *op. cit.;* Ely, F., *Oil Conservation Through Interstate Agreement* (1933); Frankfurter, F. and Landis, J., "The Compact Clause of the Constitution", XXXIV *Yale L. Jour.* 685; Wilson, C., "Interstate Compacts Under the Constitution—Past Uses and Future Possibilities", LVII *Amer. Bar Ass'n Rep't,* 734; *Report of the Committee on Interstate Compacts of the Commissioners on Uniform State Laws,* 1921 and *op. cit.,* 1931.

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compacts"?[19] Or is the compact device "flexible in operation" as the report of the Petroleum Investigation indicates?[20] On this determination may depend its efficacy in handling many problems of social legislation.

Here, as in any such examination, the Constitution is the starting point for definition. Authorization for the states to enter into agreements with each other with the consent of Congress has been implied from the section of the Constitution which reads: "no state shall enter into any treaty, alliance or confederation" and "no state shall, without the consent of Congress . . . enter into any agreement or compact with another state or with a foreign power."[21] Despite the negative phraseology, suggesting the bare possibility of a constitutional desire to limit the use of such agreements by the states,[22] the authorization has long been regarded as positive and more recently, due to the great interest in compacts, as recognizing "the necessity for official cooperation between the state governments."[23] For practical purposes "compact" and "agreement" are synonymous terms[24] and may be so informal in character that they are not of necessity even written.[25] The type of compact advocated for control of social problems, however, offers enough administrative and constitutional difficulties to necessitate a carefully written arrangement, so more informal agreements need not concern us here.

[19] Address at Interstate Conference on Labor Compacts, Spring Lake, New Jersey, June 29, 1935; *New York Times*, June 30, 1935, "16 States Propose Child Labor Curbs".

[20] *Petroleum Investigation, Rep't Pursuant to H. Res. 441, 73d Cong.*, Rep't No. 2, Union Calendar No. 3; 74th Cong., 1st Sess., June 2, 1935.

[21] Art. I, Sec. 10. Compacts with a foreign power are beyond the scope of this discussion.

[22] *Interstate Compacts in the Field of Labor Legislation, op. cit.*, p. 7, note 1.

[23] *Joint Res. Providing for an Unpaid Commission on Interstate Cooperation*, N. J., VIII State Government, April 1935.

[24] They will be so used during this discussion. In Virginia v. Tennessee, 148 U. S. 503 (1893), it was indicated that a "compact" might be a somewhat more formal arrangement than is usually implied in an "agreement".

[25] Annotated Constitution published by authority of United States Senate, p. 365. *Cf.* Holmes v. Jennison, 14 Pet. (39 U. S.) 548 (1840).

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It is important to distinguish between compacts or agreements and "treaties". The Constitution refrains from exact definition and the Supreme Court, following Story, considered that the prohibition against the formation of treaties by the states was directed at the formation of any combination tending to increase the political power of the states themselves,[26] but apparently failed to realize that the ever-changing conception of what is political defeated their attempt at clarification. So it would seem reasonable to think that the Supreme Court has thought wise to leave the decision to Congress [27] as to whether or not any agreement sanctioned by it approaches the status of a treaty, for it may be assumed that Congress would refuse its consent to any combination between states which might endanger federal supremacy. There is one more definition that must be determined: the possible difference between a compact and reciprocal legislation. If one state enacts a statute to take effect upon the passage of similar legislation by another state, the legislation is reciprocal, but if the representatives of two or more states confer and agree on lines of action to be followed by the states concerned, the agreement then constitutes a compact. It is held by some that this difference is one of form only. The essence of a compact, in any event, is the intention to create a binding agreement between the states concerned.[28] Even though reciprocal legislation often approaches the status of a compact, it is differentiated by the fact that it does not require the consent of all parties concerned for altera-

[26] Virginia v. Tennessee, 148 U. S. 503 (1893), quoting Story, II, *Commentaries on the Constitution* (5th ed., 1891); Union Branch R. R. Co. v. East Tennessee & Georgia R. R. Co., 14 Ga. 327 (1853); Searsbury v. Woodford, 76 Vt. 370, 57 Atl. 961 (1904).

[27] *Cf.* distinction made by a lower court in McHenry County v. Brady, 37 N. D. 59, 163 N. W. 540 (1917) where the court held that a working agreement between a Canadian municipality and American authorities as to the operation of a drainage board in Canada was not a treaty but merely a compact, and one not even involving the interest of the federal government.

[28] Chamberlain, J. P., "Legislation Through Compacts Between States with Consent of Congress Apt to be More Satisfactory Than Reciprocal Statutes Where the Issue is Important and Involves Mutual Sacrifices", IX *American Bar Ass'n Journ.*, p. 207. Ely, *op. cit.*, pp. 212-13, makes no clear distinction and indicates that "it is the conditional or reciprocal clauses of such statutes which, of course, constitute the compact features of them."

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tion in its terms, and particularly by the fact that it does not require Congressional approval.[29]

I. PROCEDURE FOR NEGOTIATION OF INTERSTATE COMPACTS

1. The Part of the States

Neither the Constitution nor acts of Congress indicate any general procedure for negotiation of interstate compacts, and so, like Topsy, the legislation has grown in a somewhat hit-or-miss fashion. Both the states and the federal government act together, but it is to the states that attention must first be turned in an examination of the significance of interstate compacts in relation to social legislation. Not only have the states been the first nursemaid of such legislation, but furthermore it is for their aid rather than that of the federal government that the compact device is more frequently advocated today.

The first problem is to get the ball rolling, for states must be persuaded to act. In the past there have been many instances where they have shown inertia in taking the initiative and where, on the other hand, they have been shy in accepting the invitation of the federal government to enter agreements, as will later be seen.[30] Considerable discussion is often necessary to point the way, for states must be convinced that it is not to their disadvantage to enter an agreement. This persuasion is particularly difficult in any situation where the competitive element is strong between states, as is found, for example, in the " hot oil " difficulties.[31] In such situations, states must be convinced that compacts will relieve rather than aggravate the conditions of interstate competition before they will consent to negotiation.[32] An illustration of how slowly the compact may get under way under such competitive conditions is found in the development of agreements in the field of labor legislation. Back in January 1931 Governor Roosevelt of New York called a conference of governors to discuss unemployment

[29] Gen. Stat. of New Jersey 1709-1895, vol. II, p. 1593; Sess. Laws of Pennsylvania, 1895, p. 295.

[30] *Vide infra*, pp. 509, 519, 521.

[31] *Cf.* S. 2207, 74th Cong., 1st Sess.

[32] *Cf.* Governor Hoffman, *op. cit.*

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and related problems, and this and subsequent conferences, beginning in June of that same year, of labor department officials of the northeastern states [33] aroused interest in the possibilities of the compact device for elimination of competitive hazards in labor legislation. Three years passed before action was formally taken on Governor Roosevelt's proposal. Discussion and negotiations continued until a compact on minimum wages, the first in the field of labor legislation, was signed on May 29, 1934. The first ratification was appended about a month later but the second was delayed until May 29, 1935, exactly a year after the signature of the compact.[34]

But this is getting ahead of the story. After interest is aroused in possibilities for use of an interstate agreement in handling a given problem, each interested state may enact legislation authorizing establishment of a state commission to act in conjunction with similar commissions of other states for negotiation of the proposed compact. Thus Massachusetts, stimulated by the numerous discussions of the possibilities for compacts in labor legislation, became enthusiastic over the prospect of coöperative action in that field and so created a "Commission on Interstate Compacts Affecting Labor and Industries".[35] This commission was authorized to negotiate with similar commissions of

> New York, Rhode Island, Connecticut, Vermont, New Hampshire, Maine, Pennsylvania, and New Jersey, or any of them, for the purpose of negotiating or agreeing upon a joint report. Said report shall recommend to the legislatures of the participating states a policy to be pursued by such states with reference to the establishment of uniform wages, hours of labor and conditions and standards of employment by the enactment of such legislation by such states as will constitute an interstate compact.[36]

[33] For detailed history, *vide First Report*, etc., *op. cit.*, Mass.

[34] The first was that of Mass., by Acts of 1934, Ch. 383, signed by the governor June 30, 1934, while the second was that of New Hampshire, by Acts of 1935, Ch. 112, signed by the governor May 29, 1935.

[35] Mass., Resolves of 1933, Ch. 44.

[36] *Ibid.* This was amended by Resolves of 1934, Ch. 25, to include such states in addition to those named as may desire to join in the formulation of compacts.

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In case a state legislature is not in session or neglects to appoint negotiators, the governor may appoint a commission or may designate officers to take part in the interstate transactions. Thus after the appointment of the Massachusetts legislative commission, all of the New England governors, meeting at the call of Governor Ely in Boston on October 10, 1933, united in a resolution "promptly to appoint such commissions."[37] Pursuant to the resolution, the governors of Rhode Island, New Hampshire and Maine appointed such commissions, while others, doubtful as to their authority to make such appointments without legislative sanction, or at least dubious of the expediency of such action, selected one or more delegates from the state labor departments to represent them as negotiators.[38] The chief difficulty with such appointments, particularly in such fields as labor legislation, where there is necessity for constant negotiation in a changing field, would seem to be practical rather than legal, for such interim commissions may be seriously handicapped on the financial side unless it is possible for allocations to be made to them from an emergency fund, as has been done in New Hampshire.[39]

The personnel of these commissions varies widely. Thus the Massachusetts commission on labor legislation consists of seven unpaid members; of these one must be a member of the state senate, designated by the president of the senate; three, members of the house of representatives, designated by the speaker; three appointed by the governor. The more recently created New York state commission is larger and contains provisions for coöperative effort with the state department of labor,[40] to the important end that the expert advice of

[37] *First Report*, Mass., *op. cit.*, p. 16.

[38] *Third Report*, Mass., *op. cit.*, p. 19.

[39] *Interstate Compacts*, etc., *op. cit.*, N. H. Report, p. 22, "Financial Statement".

[40] The membership is to consist of "the industrial commissioner of the state of New York, who shall act as chairman of the commission, and ten additional members, as follows: two senators appointed by the president pro tem of the senate; two assemblymen, appointed by the speaker of the Assembly; and six members, to be appointed by the governor, two of whom

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those administering the existing labor law of New York may be in constant touch with the interstate proceedings.

The commissions appointed to represent the participating states meet in some designated place and negotiate and sign a compact. There is often considerable ceremony about the procedure, such as took place at the signature of the minimum wage compact at Concord, N. H., on May 29, 1934. In his address at that time, Governor Winant emphasized "the point that the signing of the compact will not in any way commit the individual states, but will represent merely the personal agreement of the several commissioners taking part in the ceremony. The Commissioners will then be responsible for recommending action on the Compact to their respective state legislatures." [41] There are, however, instances in which this action may be regarded as of a binding character. So the agreement establishing the Port of New York Authority takes a short cut by providing that the compact

> when signed and sealed by the commissioners of each state as hereinbefore provided and the attorney-general of the state of New York and the attorney-general of the state of New Jersey if he be designated so to act by the state of New Jersey, shall become binding upon the state of New York and shall be filed in the office of the secretary of state of the state of New York.[42]

The loosely worded prison labor compact also attempted a short cut by its provision that "the effective date of this Com-

shall represent the interests of the organized employees in the state, and two of whom shall represent the interest of the people of the state. . . .

The members of the industrial board shall act in an advisory capacity to the commission, and if the commission so requests, the industrial commissioner shall assign a qualified officer or employee of the department of labor to act as secretary of the commission and such other employees of such department and give such other assistance, advice and statistical data as the commission may deem necessary for the expeditious consummation of its work hereunder." Laws of N. Y., 1935, Ch. 186.

[41] Report of the New Hampshire Commission, *op. cit.*, p. 32. *Cf.* Virginia v. Tennessee, 148 U. S. 503 (1893) for discussion of the fact that preliminary negotiation is not within the ambit of the compact clause of the federal constitution.

[42] Laws of New York, 1921, Ch. 154, p. 2; New Jersey in Laws of New Jersey, 1921, Ch. 151, p. 2, and Congress in Public No. 17, 67th Congress make similar provision.

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pact shall be January 1, 1934, as to all states which have signed at that time and as to all states signing thereafter, it shall take effect as of the date of such signing." [43] But the procedure indicated by Governor Winant is the more general. Ordinarily before a compact may be made effective, it must be ratified by the legislatures of the participating states, and indeed such ratification is the heart of the procedure. An important tendency, found in the minimum wage compact, is for the agreement in its own terms to set forth the procedure to be followed, by providing that " any state may at any time become a party to this compact by taking the action required . . . subject to the consent of Congress." [44] To prevent states from slowing up action until they are sure what other states are doing in a matter, this agreement contains a further safeguard that it will take effect when ratified by two or more states.[45] This proviso was designed to prevent a focus of opposition to the compact in the last state whose ratification is required to make a compact effective. In point of fact, a statement that a compact takes effect when ratified by a certain number of states obviously means that it actually is effective in only those states. As already indicated, the two states of Massachusetts and New Hampshire had ratified the minimum wage compact within eleven months from the date of signature and made the agreement legally effective for them. Of those two states Massachusetts, as the leader in the movement for compacts in labor legislation, amended its law to conform to the requirements by the end of a month from the date of signature,[46] while New Hampshire needed no further legislation as it already had in existence a minimum fair wage law which met the standards required by the compact.[47] In fact, New Hampshire was one of four [48] of the seven signatory states which already had such minimum-wage laws in effect at the time of

[43] Art. XI.

[44] Title II, Sec. 7.

[45] Title II, Sec. 10.

[46] Acts of 1934, Mass., Ch. 383.

[47] Laws of 1933, N. H., Ch. 87.

[48] The others were Conn., New York and New Jersey.

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agreement to the terms of the compact, and this was indeed one of the reasons for adoption of this subject as the first in the field of labor legislation, as ratification under such circumstances was thought comparatively easy to obtain.[49] However, until not only the other signatory but all competing states are brought into the picture, the two ratifying states and the three others with laws of similar standard are at a competitive disadvantage. Furthermore, that disadvantage may be increased by differing administrative regulations of the states with even similar legislative standards, for it is obvious that legal effectiveness is a long way from administrative efficiency. If a competitive differential becomes too great between the states, it is easier for the three states not bound by the compact to repeal their unilateral legislative enactments than for the three states which have joined in an agreement. Therefore those persons within a state who desire to retain that competitive differential for the industries of that state oppose the ratification of compacts in such competitive fields.[50]

The prison labor compact might seem to indicate that ratification may be easier to obtain if it is possible for participating states to obtain a competitive advantage through a possible lowering of their intrastate standards. It is difficult to determine the exact motives which prevailed in the discussion and negotiation which had begun among a number of states in regard to a prison labor compact previous to the President's approval on October 21, 1933 of the codes of fair competition for the retail trade and the cotton garment industry. The compact was apparently intended to minimize the danger inherent in the codes of causing a virtually complete shut-down of the open market previously existing for prison industries and to provide arrangements for the failure of state prisons to adapt their industries to the requirements of the so-called Hawes-Cooper Act of 1929.[51] The interstate agreement pro-

[49] *Recommendation of the N. H. Commission to the Joint Conference of the Interstate Conference on Labor Compacts,* May 12, 1934, *Interstate Compacts,* etc., Report of the N. H. Commission, *op. cit.,* p. 13.

[50] *Cf.* message of Employers' Ass'n of North Jersey to Interstate Conference on Labor Compacts, *New York Times,* June 29, 1935.

[51] 45 Stat. L. 1084, Ch. 79.

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vided that child labor under sixteen was to be forbidden [52] and hours of labor in prison industries were to be limited to "not more than those prescribed by the applicable Code",[53] but nevertheless in effect allowed an outlet for the products of prison industry. The compact became the target of vehement criticism on the ground that in effect standards were lowered as the restrictive provisions of the retail code and the cotton garment code did not apply to the products of institutions which complied with the requirements of the agreement.[54] The effective date of the compact was January 1, 1934 and by November first of that year the large number of twenty-seven states had formally approved.[55] It is not known whether this indicates a realization that a competitive advantage might be obtained by the lowering of standards accomplished by the compact in relation to the N. I. R. A. and the codes, but some credence may be lent the theory by the fact that the governor of one state not only demanded that the compact be administered so as to afford an outlet for the goods manufactured in the prisons of his state but also addressed a letter to the President announcing that the state proposed to institute legal proceedings against the constitutionality of any action which would deprive that state of its investment in its prison factory.[56]

Both the minimum wage and prison labor agreements are open compacts, in contradistinction to the closed type which requires ratification by a definite number of states or even by certain specified states. As already seen, it is important in any competitive situation to allow the possibility for *all* competing states to enter the compact and yet not delay action by allowing a limitless time within which they may join.[57]

[52] Art. IV.

[53] Art. II.

[54] *Report of the Committee on Competition of Products of Cotton Garment Industry With Products of Prison Labor As Directed By Executive Order Nos. 118-135 of Oct 12, 1934*, N.R.A. Nov. 26, 1934.

[55] Letter of the Secretary of the Prison Industries Code Committee of Jan. 16, 1934 to the N.R.A. Administrator. "Formally approved" as used in this letter doubtless indicates legislative ratification.

[56] *Report of the Committee on Competition*, etc., *op. cit.*, p. 7.

[57] For statement of these advantages in regard to the minimum wage compact, *cf. Recommendation of the N. H. Commission, op. cit.*, p. 13.

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Advocates of compacts in labor legislation have feared that this process of ratification may move so slowly that the mere fact that it is under way may be used as an excuse for opposing or delaying needed legislation within the states party to the compact.[58] They therefore resolved:

> That it is contrary to the intent of the Compact Agreement that it should in any way be used to delay or obstruct the passage of labor laws in the individual states; and
>
> That participation of any State in the negotiation of an Interstate Labor Compact does not relieve that State from the moral responsibility for the enactment of progressive labor laws.[59]

There are various methods by which the assent of a state to a compact may be given, such as a joint resolution of the state legislature,[60] a statutory offer by one state and acceptance by another,[61] or parallel legislation incorporating an agreement previously drafted by the representatives of the states party to the compact. The important thing for purposes of this discussion is that assent has occurred rather than how it has been given. And whatever form that assent takes, it is a legislative act, subject to veto by the governor.[62] Under the Port of New York Authority the gubernatorial veto reaches even to the proceedings of the administrative body.[63] Thus the minutes of every meeting are sent to the governors of both New York and New Jersey for approval or veto within a certain length of time.

It must be borne in mind that ratification by a state legislature generally constitutes the second action of that body in relation to the compact.[64] As many state legislatures meet only

[58] Johnson, E. M., *Legislative Levees*, State Government, July 1935, p. 152.

[59] *Resolution of Interstate Conference on Labor Law Compacts*, April 23, 1934.

[60] State *ex rel.* Baird v. Joslin, 116 Kan. 615, 227 Pac. 543 (1924).

[61] Chesapeake & Ohio Canal Co. v. Baltimore & Ohio R. R. Co., 4 Gill & Johnson (Maryland 1832).

[62] *Report of the Committee on Interstate Compacts, op. cit.*, 1921, p. 44.

[63] *Vide infra.*

[64] Unless the governor had appointed the negotiators without legislative sanction, in which case ratification would constitute the first legislative step.

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biennially, ratification usually takes place, at the earliest, two years after the authorization of the appointment of a negotiating commission. Furthermore—and this is important—in many instances ancillary legislation is necessary on the part of the participating states before the terms of the compact take form in law. Thus in addition to ratification of the agreement itself, subsequent legislative enactment was necessary to embody the terms of the minimum wage compact in state legislation and administration in all except those four states which at the date of the Concord signature had mandatory minimum wage laws of the standard set by the compact. A similar situation was found in the prison labor compact, which contained the following provision:

> The representatives of the States signatory hereto being in some instances restricted in their action by statutes which cannot immediately be modified, enter into this agreement in their own right and subscribe to it in so far as the laws and regulations of the sovereign states they represent will permit, and they further pledge themselves to cooperate to secure the adoption of such changes in the laws and regulations by the properly constituted authorities as may be necessary to permit them to adhere fully to this compact, but nothing in this compact shall affect one way or another any Federal Act relating to prison-made products or any State Act passed or effective under any such Federal Act if said acts are held constitutional and valid. It is specifically understood that by signing this Compact no signatory hereto is thereby estopped from asserting the unconstitutionality or invalidity of said Acts.[65]

For practical purposes, the attainment of such subsequent legislation may be of at least equal importance with ratification. In a competitive world, a pledge to coöperate may remain merely a pious wish when it is necessary to secure the adoption of such changes in the laws and regulations as may be necessary to permit the state to fulfill the spirit as well as the letter of the compact. Furthermore, even with the best will in the world there are difficulties involved in any attempt to reconcile not only legislation of different states but the rules and regulations

[65] Article IX.

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of differing state administrative bodies, for it is a truism that the same law on the books may become a different one in practice because of differing administrative interpretations.

2. *The Part of the Federal Government*

An interstate agreement legally takes effect immediately on ratification by the requisite number of participating states, if Congress has previously consented. But this brings a new element into the situation, the federal government. As no state shall, without the consent of Congress, enter into any agreement or compact with another state, it has been implied that a state may, with the consent of Congress, enter such an agreement. But there is no suggestion of when or where that consent is to be given. In the somewhat haphazard method by which the compact clause has come into use, the consent of Congress may join the procession at almost any time,[66] running ahead, or straggling behind, or even finding itself there unseen and unheard but present by implication. The early tendency, not entirely uniform to be sure, was for the states to draft compacts without previous permission of Congress and then to submit their action for its blessing, but more recently the growing number of matters of federal concern has caused the blessing to come first and the action afterward, when it has come.

Consent may be given after the actual negotiations have taken place, no matter how tardily that consent may come. For instance, a boundary settlement between New York and Connecticut was agreed on by compact between the two states in 1911 and 1912 but not approved by Congress until 1925.[67] This type of delay may be caused by the fact that only the general terms of agreement are laid down at the time of negotiation, as when a boundary line is to be run and its exact location cannot be determined in advance.

[66] Virginia v. Tennessee, 148 U. S. 503 (1893); Green v. Biddle, 8 Wheat. (U. S. 1823); State *ex rel.* Baird v. Joslin, 116 Kan. 615, 227 Pac. 543 (1924).

[67] Agreement signed Jan. 3, 1911 and Mar. 5, 1912 by the governor of Conn. and the State Engineer of N. Y., respectively. Ratification took place in N. Y. April 15, 1912 (Laws of N. Y., 1912, Ch. 352, p. 692) and in Conn. June 6, 1913 (Special Laws 1104, Conn.). Congressional assent was given on Jan. 10, 1925 (43 Stat. L. 731-738).

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On occasion, approval may be given actions after the fact rather than by particular and explicit mention. In other words, "consent may be implied, and it is always to be implied when Congress adopts the particular act by sanctioning its objects and aiding in enforcing them."[68] It is even possible for agreements to be made concerning mere business arrangements or matters not of interest to Congress, where there is no "political" implication, with no necessity for acquiescence of any kind.[69] It has been suggested that collusion might occur between states desirous of avoiding submission to Congress, but in that event Congress could usually show such arrangements to be more than mere informal business discussions. Furthermore, as the zone of federal influence grows, it seems unlikely that a large number of interstate agreements will be entered where there would be no necessity for federal acquiescence. This is certainly true in regard to social legislation, which has tried, albeit sometimes unsuccessfully, to hang on the skirts of the federal commerce and taxing powers.

It seems probable that the federal government may be increasingly discontent with the passive rôle of approbation of what states may initiate. It has already evinced a disposition to stimulate direct action on their part, in numerous instances, calling attention to the need for action in regard to a particular enterprise by giving that enterprise authorization in advance, as in the statute allowing the states of Wisconsin, Illinois, Indiana and Michigan, or any two of them, to conclude a compact settling the jurisdiction of those states over offenses arising out of the violation of their laws on Lake Michigan.[70] Congress

[68] Virginia v. Tennessee, 148 U. S. 503 (1893), quoting Story, *op. cit.* Compare Indiana v. Kentucky, 136 U. S. 479 (1890); Maryland v. West Virginia, 217 U. S. 1 (1910); Georgia v. South Carolina, 257 U. S. 516 (1922); *contra*, Arkansas v. Tennessee, 246 U. S. 158 (1918). Compare also, Massachusetts v. New York, 271 U. S. 65 (1926).

[69] State *ex rel.* Baird v. Joslin, 116 Kan. 615, 227 p. 543 (1924); Searsbury v. Woodford, 76 Vt. 370, 57 Atl. 961 (1904); Union Branch R. R. Co. v. East Tennessee & Ga. R. R. Co., 14 Ga. 327 (1853); McHenry Co. v. Brady, 37 N. D. 59, 163 N. W. 540 (1917). *Cf. First Report of the Commission on Interstate Compacts Affecting Labor and Industries*, Mass., p. 25.

[70] 36 Stat. L. 882. This is but one of numerous possible illustrations, such as 43 Stat. L. 1208, Ch. 534; 43 Stat. L. 796; 43 Stat. L. 1268; 44 Stat. L. 1268; 45 Stat. L. 1057.

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may go even further and anticipate state action by delivering an invitation in general terms to any or all states to undertake certain interstate compacts. Congress tried this method as far back as 1911. An act of that year gave consent to each of the states "to enter into any agreement or compact not in conflict with any law of the United States, with any other State or States for the purpose of conserving the forests and water supply of the States entering into such agreement or compact." [71]

Professor Ernst Freund saw a possible utility in this procedure of blanket consent in advance as a method by which the cumbersome and slow-moving qualities of the compact method might be lessened,[72] but neither when he advocated it in 1921 nor for the next decade or more was any great attention paid to his suggestion.[73] No state availed itself of the possibilities for compact suggested by the 1911 Forest Conservation Act, nor indeed many others put forward by Congress.[74] The inertia of the states was great and stimulus was disregarded. Altered circumstances, however, and the new interest in compacts led Congress in 1934 to forget discouraging experience and to return to the model of the Forest Act in

[71] 36 Stat. L. 961, amended 43 Stat. L. 1215.

[72] *Report of the Committee on Interstate Compacts of the Conference on Uniform State Laws, op. cit.*, pp. 61-4.

[73] "The framing of a Congressional act giving consent in advance to the formation of state compacts dealing with specific subjects is objectionable upon several grounds. The first is that your committee does not know these concrete subjects in which compacts suggest themselves as the desirable arrangement. The compact by its very nature being a regional matter is put beyond the concern of this Conference. . . . If, on the other hand, all that is asked is the framing of legislation whereby Congress should give its consent to states forming compacts generally upon such matters as river apportionment, harbor regulation, forestry regulation, and the like, such legislation seems objectionable because it requires Congress to give its assent to very indefinite propositions. Such legislation has no practical value from the standpoint of inducing states to act. It is responsive to nothing more than a mere academic urge and reflects no concrete aim of the states." *Report of the Committee on Interstate Compacts of the Conference on Uniform State Laws*, 1931, pp. 30-31.

[74] *Cf.* Ely, *op. cit.*, Appendix II, Part II, for list of cases in which Congressional consent in advance of negotiations has been ineffective as a stimulus to state action.

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its new legislation. Thus by recent Congressional action, any two or more states may

> enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.[75]

Such consent was recently given for the conservation of the petroleum resources and restriction of crude petroleum production among the compacting states.[76] Other proposals have been made, such as that of blanket consent for compacts "providing for greater uniformity in the laws of the several States affecting the relation of employers and employees."[77] The enthusiasm for the idea of such blanket consent became so great that the Second Interstate Assembly between February 28 and March 2, 1935, resolved that the Congress of the United States "should pass a general enabling and consenting act respecting compacts negotiated between two or more states affecting interstate tax conflicts and not affecting the fiscal interest of the federal government."[78]

Congress may consent to a compact but still wish to keep a finger in the pie from the earliest to the last stages of baking. Nor do the states always resent this interest in their cooking, as for instance, Arizona, which in its anger over the Colorado River Compact[79] has said that it would sign the compact[80] in

[75] 48 Stat. L., Ch. 406.

[76] Public No. 64, 74th Cong.

[77] S. Bill 3351, 74th Cong., 1st Sess. This bill had been introduced before. Cf. H. J. Res. 267, 73d Cong., 2d Sess.

[78] VIII *State Government*, April, 1935, No. 4, p. 102.

[79] For the position of the different states in regard to the controversy, *vide:*

Arizona: Report of the Colorado Commission of Arizona for Period 1931-1932, and *idem* for Period February 2, 1933-May 3, 1935; Favour, A. H., *Arizona's Right in the Colorado River*, Proposals of Arizona and Counter-Proposals of California (1929); La Prade, A. T., *Two Opinions of the Attorney General Furnished to the Colorado River Commission of Arizona* (1933); Maddock, T., *Reasons for Arizona's Opposition to the Swing-Johnson Bill and the Santa Fé Compact* (1927).

California: Analysis of Boulder Canyon Project Act & Text of Colorado River Compact, etc. (1930, State of California, Colorado River Commis-

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regard to distribution of the waters of the Colorado River "if anywhere there is assured to this state by Congressional federal jurisdiction, or otherwise, its share in the Colorado River water."[81] Whether or not the states desire it, Congress may insist on federal participation in the negotiations if it has a particular interest involved. Thus, it conditioned its authorization of a statute for the apportionment of the waters of the Columbia River between Washington, Oregon, Montana and Idaho by insisting

> that two suitable persons, who should be appointed by the President of the United States, one from the Department of the Interior and one from the War Department shall participate in said negotiations as the representatives of the United States and shall make report to Congress of the proceedings and of any compact or agreement entered into.[82]

It furthermore sought to hasten action by setting a time limit of January 1, 1927 for the states to come in. Their dilatory tactics, however, necessitated extensions of time until January 1, 1935.[83] Similar arrangements for time limit were provided in the Boulder Canyon Project Act,[84] but there the long-drawn-out controversy appears to have somewhat exhausted the patience of Congress. That act stipulates that the States of Arizona, California, Colorado, New Mexico, Utah, Nevada and Wyoming were to ratify within six months from December 21,

sion); "Colorado River. A committee to confer with like committees from Arizona and Nevada as to respective rights in the Colorado River", Report, *Assembly Journal* California, 1927, pp. 2104 *et seq.; Colorado River and the Boulder Canyon Project*, Report of the Colorado Commission of the State of California (1931).

Other states: Pittman, Key, Boulder Dam speech, April 28, 1928, *Congressional Record*, 70th Cong., 1st Sess.

[80] Nov. 22, 1922, signed at Santa Fé, N. M. The compact is often called the "Santa Fé Compact".

[81] *Report of the Colorado River Commission of Arizona* for Period Feb. 2, 1933–May 3, 1935, Part V, "The Future", p. 34.

[82] 43 Stat. L. 1208. For earlier use of this type of condition, *cf.* 42 Stat. L. 171, sec. 1.

[83] 44 Stat. L. 1403.

[84] 45 Stat. L. 1057.

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1928[85] but that if six states ratified and considered that the compact was then binding, it would come into force without the signature of the seventh state.[86]

Of course Congress has always held out a protecting federal arm in regard to navigable waterways, but that arm has become more all-embracing and other subjects have come within its care. For instance, the proposed authorization for compacts in the field of labor legislation includes federal participation, despite the fact that the state police power has always held that particular form of legislation as its special province. The original form of the Congressional authorization proposed that federal consent be conditional on the participation in the negotiations between states of "a representative of . . . the United States, to be appointed by the President"[87] but the later form was changed—perhaps because of the reëmergence of the states' rights doctrine—to read, "upon the request of the States negotiating . . . the President may designate a representative to attend upon such negotiations."[88]

Congress may grant its assent to a compact but withhold the right to look after its own interest in the future. Accordingly, the approval of the 1922 agreement which amplified the powers of the Port of New York Authority contains a proviso that

> the rights or jurisdiction of the United States shall not be affected by the action of New York and New Jersey under the agreement and that no change shall be made in the navigable capacity or condition of any such waters until the plans thereof have been approved by the Chief of Engineers and the Secretary of War.[89]

Most important is the fact that Congress specifically reserves "the right to alter, amend or repeal this resolution"[90] and so

[85] The date of President Coolidge's approval of the act.

[86] The Boulder Canyon Project Act was proclaimed on June 25, 1929, and in 1935 negotiations are still under way to secure the assent of Arizona.

[87] H. J. Res. 267, 73d Congress, 2d Sess.

[88] H. R. Rep't No. 1808, 73d Congress, 2d Sess.

[89] 42 Stat. L. 174-180.

[90] *Ibid.* *Cf.* 42 Stat. L. 171. 46 Stat. L. 1039 reserves the right to "amend or repeal" only.

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stretches its hand out into the future. This attempt to make assurance doubly sure by stating that its jurisdiction is not to be impaired by reason of its assent would seem to be unnecessary, for in fields of its own especial interest, Congressional authority is always supreme, and in others its express reservation to revoke or amend ratification might be held to be ineffective, in the absence of fraud or a change of circumstances, for Congress has no authority to abrogate valid existing agreements not in conflict with its own powers.[91] Changed circumstances are particularly apt to occur in regard to the problems of social legislation where flexibility and fluidity are always most important. For instance, a labor legislation compact agreed to by Congress might subsequently interfere with the control of conditions of labor in interstate commerce, and therefore Congress, regardless of previous explicit stipulations, might repeal or modify its assent. As the federal government retains the right to condition and interfere if its own prerogatives are challenged, its control increases as the number of those prerogatives increases. Here then may be found a means of important federal regulation of state activities under the compact clause, even in regard to matters of social legislation which formerly were the peculiar concern of the states.

If the interest of the federal government is great enough, it may even enter a compact itself as a participating member.[92] In the earlier stages of the difficult negotiation of the Colorado River Compact, the federal government was represented through the presence of Mr. Hoover, then Secretary of Commerce, but was not a participating member on the same footing as the negotiating states.[93] However, the final Boulder Canyon Project Act includes the federal government as an actual party to the agreement. Again, the prison labor compact was signed

[91] "A Reconsideration of the Nature of Interstate Compacts", Note 35 *Columbia Law Review*, pp. 84-5.

[92] Stearns v. Minnesota, 179 U. S. 223 (1900).

[93] 42 Stat. L. 171 provides for federal representation in the negotiations, as did the Santa Fé Compact. *Cf.* Hoover, H., "Address Before the Commonwealth Club of California", San Francisco, Dec. 1, 1922, XVII *Transactions of the Commonwealth Club*, No. 11, p. 451.

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not only by states but by the District of Columbia and the United States Department of Justice.[94]

This compact illustrates a particular form of federal action, made possible by virtue of the now defunct N. I. R. A. Thus the President, by virtue of the authority delegated to him under that act, gave the "consent of Congress" to the agreement by executive order.[95] In view of the decision in the Schechter case, this attempted short cut would not at present be possible, but there are other avenues for presidential action of a different sort. The consent of Congress may be given by resolution or formal enactment,[96] but "every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary . . . shall be presented to the President . . ." [97] to be approved or vetoed. Hence it may be presumed the executive has the control of the veto power over compact negotiation. It has been specifically suggested in regard to the problems of petroleum production which cannot be solved by state laws alone, that the negotiation of state compacts "over which the President of the United States or a Federal agency in the interest of the consuming masses of the nation may hold some veto power is a solution." [98] *

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[94] *Laws Relating to Prison Labor in the United States Enacted in 1933 and 1934.* Supplement to *Bureau of Labor Statistics Bulletin* No. 596 (1934), pp. 8-9.

[95] *Cf.* April 19, 1934.

[96] State v. Cunningham, 102 Miss. 237 (1912).

[97] U. S. Const., Art. I, par. 7, cl. 3.

[98] *Petroleum Investigation, op. cit.*, p. 9.

* To be concluded in the next number of this review.—*Ed.*

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INDIVIDUAL, STATE AND CORPORATION[1]

THE purpose of this paper is to set forth a few simple considerations on a fundamental question which has always attracted, and now especially attracts, the attention not only of every jurist but of every citizen. To say anything new on this subject is difficult but the object of our inquiry is truth, rather than novelty. In dealing with problems which have presented themselves to the human mind throughout the ages we must recognize that in all probability the root ideas and the essential terms of these problems have been perceived partially at least by some of the thinkers who have preceded us on the long and weary road of human civilization. Even ancient ideas, however, may still await positive realization or they may have found it only recently. As a philosopher has said, "The idea is not in a hurry." In this sense the recent experiences of our troubled times may not be without their lessons, if considered under a philosophical aspect.

I. There is no doubt that the individual is primarily conscious of the existence of the State as a restraint or hindrance in the way of his own actions. Even before a solid political organization has been formed, and before the fact is exactly known to the individual, he feels round him and over him a set of ties, that is, a certain pressure which derives from a predominating power—a power which is partly invisible even when impersonated in definite individuals who succeed each other more or less rapidly in the course of time.

Above all, this power forbids, under penalties more or less grave, the individual's doing certain things, these being qualified as illicit (preventable) or definitely as criminal (punishable). The series of obligations imposed on the individual is

[1] This article is based upon a lecture given at the University of Zurich by Professor Giorgio Del Vecchio, Dean of the Faculty of Law in the University of Rome.—ED.

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not only negative, however, it also consists of definite enactments of a positive nature; or of definite oaths, often very irksome, to serve the organs of authority, and even though such service may be of benefit to the individual, it must be carried out according to the orders issued by those organs. Typical in this sense are the obligations, met with in all the phases of the life of States, to aid in the defense of the organization of the State by military service and by the payment of taxes. The subjection of the individual to the State presupposes that these obligations are common to all. The very existence of a juridical and political organization carries with it the consequence that there must be on the one hand a power to command and on the other a duty to obey. If this power and this duty are, in their turn, subject to limits, a rather arduous problem presents itself in a relatively advanced phase of philosophic-juridical thought: a problem we should say always present, but not definitively resolved as yet, even under its theoretical aspect, notwithstanding the admirable efforts of the most eminent thinkers.

The primary antagonism between the power of the State and the individual considered as a citizen, cannot be eliminated altogether, even when a more profound vision of the problem, as we shall see, permits of another conception, and of the unification, in a certain sense, of the terms of the relationship. The reality of the discord is too simply denied by some schools, *a priori,* in order to affirm, for example, that the State is the sole reality, and that the individual annihilates himself in it, or identifies himself with it. Indeed such a denial reminds us of the unreasoning character in an immortal novel, who demonstrated dialectically the impossibility of an epidemic malady, then raging, because the concept of such a thing entered into neither the scholastic category of the "substance" nor that of the "accident". State and individual are two terms of reality which can and must be brought into agreement and tempered, but not suppressed, in that they exist. To declare, with even greater dogmatic arrogance, that one or the other of these terms does not merit consideration, because it is unreal, or because it is, *a priori,* identical with the other, may give the

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illusion of a scientific solution, but it is only a more or less lucky game of sophistic skill, and does not take us a step farther towards the real solution of the problem.

The "denial" of the State, it is easy to observe, may derive from a hypothetical and abstract notion of individual liberty. This liberty being conceived as unlimited for each individual, it is clear that it cannot be reduced to the universal; but, on the contrary, the liberty of each individual constitutes, at least virtually, a menace and a danger towards that of all the rest. If we admit a system of limits, we admit at the same time the State, and the theory breaks down, even when, for polemical convenience, we substitute for the name "State" any other formula such as "society of equals", "union or spontaneous federation", etc. If, however, consistently with the first premise, we refuse any limitation of free will, we give rise to a formidable series of objections which derive not only from historical experience but from an elementary consideration of the fundamental needs of human nature. It would be quite superfluous to repeat here such objections, which moreover are implicit, *a fortiori,* in the refutation, as we shall soon see, of doctrines more easily maintained. Perhaps we can at times recognize some aesthetic or literary value in the expressions of extreme individualism, as for example in those of Stirner: "*Individual will and the State are powers in mortal enmity to each other, between them there is no possibility of any 'perpetual peace'*".[2] "The State always aims only at limiting the individual, subordinating and subjecting him to any generality whatever; it only lasts till the individual becomes an integral part, and is nothing but the clearly expressed limitation of the ego, it is my limitation, my slavery."[3] "For this reason the State and I are enemies".[4] "The State is founded on the slavery of work. From the moment work becomes free the State is lost."[5]

Or, to quote a writer in whom genius really borders on madness, we may recall the phrases of Nietzsche: "The State

[2] Max Stirner, *Der Einzige und sein Eigentum* (ed. Reclam), p. 228.

[3] *Ibid.*, p. 264.

[4] *Ibid.*, p. 210.

[5] *Ibid.*, p. 138.

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is the coldest of all cold monsters. It lies coldly and this is the lie: I, the State, I am the people." "Whatever it says, it lies; and all that it has it has stolen. Everything about it is false; it bites with stolen teeth." "Only where the State ceases does the man who is not superfluous begin: there begins the song of necessity, the only and the indispensable melody. There where the State ends, do you not see, my brothers, the rainbow and the bridges of the superman?" [6]

One may also admit perhaps that similar expressions, when developed with some consistency, have a certain indirect philosophical utility as a demonstration "*per absurdum*" of the contrary of their premises. But even from this point of view it must be said that systematic consistency and speculative vigor are entirely lacking, or are very scanty. When, for instance, Bakunin writes, "the State is a transitory historical institution, a passing form of society"; [7] when he attributes its origin to religion (meaning by this word the grossest primitive superstition); when he continues, "little States are only virtuous through weakness and powerful States are only maintained by crime"; [8] when, finally, on these grounds, he announces the disappearance of the State, which is to be replaced by a society founded only on the law of the obligatory nature of contracts (almost as if this law did not refer logically to a super-individual power, hence a State); it is impossible for us not to note how such theories are in direct opposition to the most certain ideas as to the origin, the functions and the essence itself of the State.

It would be too easy to prove the superficiality of these doctrines by recalling the solemn contradiction that history has already given to the forecasts of their authors (for example Kropotkin, another enemy of the State, declared that the State would disappear not later than the end of the nineteenth century). It is rather more useful to observe that these same doctrines systematically confuse the concept of State with that

[6] Friedrich W. Nietzsche, *Also sprach Zarathustra*, "Vom neuen Götzen" in *Werke*, Bd. VI, 1904, pp. 69 *et seq.*

[7] Mikhail A. Bakunin, *Dieu et l'état*, in *Œuvres* (ed. 1922), tome I, p. 285

[8] Bakunin, *Fédéralisme, socialisme et antithéologisme, loc. cit.*, p. 154.

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of government, and from the errors or faults of individual governments they, with obvious paralogism, draw the conclusion that it is necessary to destroy the State; yet they insist on the necessity of some law to enable men to live together in society, which means, really and logically, the existence of the State. Since one of the juridical laws often invoked even by theoretical anarchists (and indeed it is generally the only one admitted by them) is that of the obligatory nature of freely made contracts (on this point the doctrines of Bakunin and Kropotkin coincide with those of Proudhon and Tucker), there is no jurist who would not see *ictu oculi* the superficiality of such a conception, which entirely leaves out of consideration the complexity of all contractual régimes and the requirements that inevitably spring from them. The old illusion that the maxim *pacta sunt servanda,* independent of any jurisdiction which ascertains the subjective and objective requisites of the validity of a contract, is sufficient to regulate the relations between States, is now vanishing from the field of international law; but this illusion has never, one may say, existed, and still less would it be able to exist now in the field of private relationships, where for countless generations experience has taught that to speak of a contract is to speak of the possibility of a dispute and the need of an authority to judge it according to its merits.

II. But if the simplistic denial of the right of any authority to impose bonds and discipline upon the individual may be set aside as not seeming worthy of special refutation, very different is the case of those doctrines which, without tending to "abolish the State", nevertheless seek to define its structure in such a way as to safeguard as far as possible the rights of the individual within it.

The problem has been considered, as usual, with intentions practical and political *stricto sensu.* Against State interference in practice or in theory, in certain spheres of human activity, a contrary tendency has made itself felt as a defense of individual liberty, which was considered to be injured or threatened by the State. Hence a series of individualistic doctrines, sometimes of a very moderate character, being lim-

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ited to particular cases and problems, and sometimes of a more ambitious sort, being presented as a system, limiting the scope of the State to a few essential functions, or even to one only, that is, the protection of individual rights. The extreme, and most energetic, expression of this doctrine is the formula which declares the State to be a "necessary evil" and predicts that this evil is destined to disappear in the perhaps distant future, when, by means of evolution, the individual has been fully educated and adapted to social life. Here we have no catastrophic and revolutionary denial of the State as in the above-mentioned schools, but a forecast of its progressive and pacific elimination, of its decline, almost of its euthanasia. Is it necessary to give examples of these doctrines? One recalls the famous essay of William Humboldt, written in 1792 and posthumously published in 1851. Humboldt's premise is typically individualistic: "True reason cannot desire for man a state different from that in which the individual enjoys the most complete freedom to develop in himself, and round himself, his own personality". Hence the consequence that "any activity of the State by which it interferes with the private affairs of citizens (as long as these do not imply injury to the rights of the one through the action of the other) is reprehensible." It must, however, be noticed that the apparent clearness of these formulae is dimmed, and gives rise to an inextricable difficulty, when it comes to applying them to complex and concrete problems. When, for instance, Humboldt is faced with the problem of war, he expresses himself in such a way that he seems to approve and disapprove of it at the same time, with distinctions that are really contradictory: "The State must not in any way promote war, nor must it prevent war by means of violence if necessity demands it; it must give full liberty so that the influence of this on the spirit and character may be diffused throughout the nation, and it must abstain especially from all positive institutions which prepare the nation for war. . . ."[9]

[9] *Ideen zu einem Versuch, die Grenzen der Wirksamkeit des Staats zu bestimmen* (ed. Reclam), pp. 29-30, 31, 67.

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Another writer, the nobility of whose aims we cannot doubt, and one who is generally praised for the clarity of his ideas, John Stuart Mill, also states as a principle that the individual must be sacrificed to society as little as possible. He therefore maintains that on principle the State should abstain from everything that might give offense to the individual right to liberty.[10] Nevertheless a certain number of exceptions to this principle are admitted, for instance in dealing with the education of children and the protection of minors, as also in treating of certain forms of assistance to workingmen (limitation of the hours of labor, etc.) and to the poor, assistance which Mill does not hesitate to qualify as a duty of the State. Other forms of State intervention he admits in the matter of colonial expansion, and finally in discussing the promotion of geographical discoveries, scientific explorations and great public works.[11] How all this is reconciled with the rigidly individualistic premises of the author, it is really difficult to understand!

Another famous exponent of this type of opinion is Spencer, who develops, especially in his book with the significant title, *Man versus the State,* as also in some others of his works, a series of considerations directed towards combating the extension of the functions of the State. In his opinion there are two "great political superstitions": one belonging to the past, that is, the divine right of kings; the other to the present, which is the divine right of parliaments.[12] The consequence of both forms of superstition is the opinion that there exists an "unlimited authority", to which we owe an obedience equally unlimited. What is the reason, asks Spencer, for affirming that it is a duty to submit in everything to a governing power?[13] We shall not repeat here his exposition of the "sins of legislators" and the dangers of a "new slavery"; these are well enough known. Progress, according to Spencer, consists essentially in this, that the State gives up its undue interference, and that citizens always oppose themselves to it.[14] At least

[10] *On Liberty*, ch. iv; *Principles of Political Economy*, Bk. V, ch. xi, §§2, 7.

[11] *Principles of Political Economy*, Bk. V, ch. xi, §§ 9-16.

[12] Herbert Spencer, *Man versus the State* (ed. 1886), p. 78.

[13] *Ibid.*, p. 79.

[14] *Political Institutions* (ed. Ital. 1904), pp. 538 *et seq.*

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Spencer himself, an honest observer, recognizes that the sphere of action of the modern State has been enlarged, contrary to the requirements of his theory. His explanation of this phenomenon, however, as a simple reactionary wave, produced by the "reflowering of militarism", is obviously superficial and insufficient. The truth is that the increase in the functions of the State is a necessary consequence of the multiplication of the forms of human activity in general, since all the developments of human energy must be regulated by law, and hence by the State, which is precisely the subject of the juridical order. This does not mean that *any* intervention by the State is just, or that legislators are infallible. Certain of Spencer's observations may therefore remain valuable. But his vision of the entire problem seems in truth to be too narrow; and only by means of a more profound examination, made possible by philosophical premises differing from those of Spencer, can we really ascertain the nexus between the individual and the State and reconcile liberty with authority.

An equally uncertain doctrine is met with (to give still another example) in the lively criticism that a French writer, Paul Leroy-Beaulieu, makes of the excessive activity of the State: "an organism heavy, slow to conceive and to move." "In spite of its vast ambitions", he writes, "the modern State is a delicate and imperfect instrument." "The inventive faculty and the gift of rapid adaptation are lacking in it." In his effort to point out the limits of the State's action, Leroy-Beaulieu does not go so far as to agree with Jules Simon, who had written: "The State must work at rendering itself useless and prepare to send in its resignation." He recognizes that the State has the character of perpetuity, and must therefore "represent perpetual interests and safeguard them against the improvidence of present interests." This admission opens a great air hole in the closed circle of the individualistic conception. The same author also admits that the State is the natural protector of the weak; and that it may share in the development of individual works which constitute progressive civilization. Finally, he declares, with praiseworthy frankness but with some loss of consistency, "the impossibility of

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ixing by a theoretical rule the limits of that participation in he works of civilization." [15] He too recognizes in every part of his work that actual reality and the tendency of the modern ıge is in the direction of an increase of the functions of the State; and this recognition of a very general fact, which has ecome more imposing and more evident in these last years, s not without significance. The widespread nature of the endency itself shows, it is true, that it is not a question of a nistake on the part of individuals, or of a single party, or of a particular government. It is a phenomenon that has deep and complicated roots in the present phase of our civilization. We certainly do not wish to dogmatize *sub specie aeternitatis* on he characteristics of the present historical phase, and we can even admit, as a hypothesis, that another phase will succeed it vith different, and perhaps, opposite characteristics. But to render this hypothesis plausible, it would be necessary to give demonstration which has not been provided up to the present.

It would be necessary to explain why and how the moving orces of our civilization should be annulled and superseded by others, acting in the contrary sense. We are disposed to admit that an ideal of an ethical or deontological order can be philosophically opposed to empirically existing reality; but it vould be necessary to demonstrate the value of the ideal. As egards our particular problem, proof would be needed that he cessation or the progressive weakening of the juridical order would increase the value of life and permit of its attaining to higher and more perfect forms of activity. Not only ıas no such demonstration been given, but weighty arguments how on the contrary that the weakening of the juridical order nd the loss of authority on the part of the State are correlated vith a decadence of morals and a regression in all the manifestations of life.

III. The solution of the problem must not be sought in a quantitive division of what belongs to the State and what belongs to the individual, as if it were a question of two contending parties in a competition. It is difficult to admit that ny part whatever of individual life and activity should be

[15] *L'État moderne et ses fonctions* (3.e éd., 1900), pp. 95, 459, 468.

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separated from or remain outside the State, as that would b equivalent to conceiving the State as something extrinsic o material, having its own body distinct from that of individual But the State is, in truth, nothing else than a point of refer ence for all juridical decisions which necessarily, under th categories of the licit and the illicit, embrace and govern a the expressions of life. What really matters is to define th *sense* in which the individual belongs to the State. This con dition of belonging cannot and must not be understood a slavery; only in this case could one regard as legitimate th efforts of those who hold the individualistic theory to reduce t a minimum the interference of the State, and to keep it at th greatest possible distance from the individual.

The allegiance or belonging of the individual to the Stat must be intimate and substantial, we may say also integra without implying, however, any diminution of the individu himself and of his natural autonomy. On the contrary would mean that his individuality and autonomy would b confirmed, strengthened and defended in their universal valu An English politician, Chamberlain, once said that the peop have nothing to fear from the interference of the State, becau " they have themselves become the State ". This phrase justl though too briefly and too summarily, gives the essenti kernel of the problem that occupies us. It is just at this poi that further clarification is needed in order to avoid anoth series of errors which accumulate in the treatment of th *vexata quaestio*.

It has often been stated, by a too simple formula, both ancient and modern times, that the subjection of the individu to the State is always legitimate, because he has himself co sented to it. The State, it is said, is not and cannot be an thing other than the synthetic expression of the will of t citizens. The bonds by which the latter are attached are n really oppressive, because they represent precisely the result collective deliberation or psychological elaboration. This do trine, as you well know, has assumed many different form while preserving the same significance and retaining the sam fundamental defect. For several centuries it has been assert

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by the supporters of the presumed social contract, that this very contract, unanimously approved according to their hypothesis, would do away with the reason for any juridical claim of individuals against the State. In more recent times it has been affirmed that law, and hence the State, arises as the expression of a popular juridical spirit or conscience; the conclusion being deduced that disagreement is not possible between the individual aspirations of conscience and the positive juridical laws.

The equation between the State and the individual, between authority and liberty, would be, in both cases, absolute.

Thus regarded, the political problem is apparently eliminated from the doctrine, but not, unfortunately from reality. And it is not difficult to perceive where the error lies. We shall not speak of the supposed social contract since, this being understood empirically, as we have just shown—that is, as a real expression of will, happening once for all, on the part of all the associates—it represents only an anti-historical and irrational fancy. We call it also irrational because, even admitting this fantastic theory, in no way could we deduce from the will of certain individuals a bond for all the generations to follow.

The other conception, which regards the anonymous and partly subconscious work of the multitude, that is, their common beliefs, as the source of the rules that mold social life, has a much more scientific aspect. But it is necessary, if we are to avoid erroneous assertions as to the part that truth plays in this conception, to point out that the psychological contributions of single individuals and particular classes in the working out of common opinions and rules are in reality very varied. Only by a sort of myth has it been supposed that a mystic voice (the so-called "soul of the people") gives uniformly, without any opposition, to every society its rule of life. What is true is that even in the primitive phases, and still more in more advanced stages, there is among individuals both friction and opposition in the production of positive law; and not only between individual and individual but also, and much more, between the various groups of society there is, though often invisible, a kind of struggle, each individual and each group

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trying to make his or its own juridical aspirations prevail. That which appears as the positive law of a certain society is, and can be, nothing else than the mean or resultant of this sort of conflict; which is to say, the expression of that will which we may call the *preponderant social will.* As a consequence, there is always and necessarily, in every society, we may assert, some fraction of unsatisfied juridical aspiration, a number of needs, exigencies and claims which wait in vain (at least for a time) for recognition. It is just this want of equilibrium that, if we look well into it, constitutes the leaven or the secret spring of every historical development.

If this is true of the production of law in general (comprising also customary law), much more does it apply to that species of production which comes about by means of a differentiated technical and political structure; that is, by means of legislative organs, let them be constituted by few or by many individuals, charged with this function. It is very clear, and has been observed frequently, that even the existence and activity of these organs presuppose a certain consent among the generality of the people; for, if such a consent were wanting absolutely, it is evident these organs could not exercise their power really.

But from this observation to the belief that the consent is always perfect, equal and unanimous, is a long step. We must also distinguish the different meanings of the word "consent", which sometimes represents profound conviction and a spontaneous, fervent will, and at others merely passive endurance, forced obedience or absence of opposition. The misunderstanding arising from the confusion of these two concepts has at all times been the means, as convenient as it is fallacious, of asserting, in good or bad faith, a nonexistent unanimity, and of justifying any established government in its action. A philosophic consideration, however elementary, of law cannot accept such arbitrary identifications and generalizations: in the light of calm criticism they disappear like fog in the sun.

The formation and transformation of political power represent a very complicated phenomenology in which we may observe infinite grades and innumerable forms, as often of

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active or passive consent as of resistance or of conflict. In a rigorously scientific sense we can only say that in all human societies there is, more or less defined, a certain power which represents the will socially strongest; but this power may be, and as a rule is, contested by other powers, that is, by other wills which may be little less strong than the predominant nucleus. It is hardly necessary to point out that the plurality of social organizations and political tendencies may result in the power in force being stronger in comparison with any single opposition, but much weaker than that which would represent their sum, if the various species of opposition are not in disagreement among themselves.

This obvious consideration explains why, contrary to the conclusions that might be drawn from certain abstract formulae, a majority of consents is not at all necessary for a power to preserve its predominance for a certain time, despite the attacks of opposition parties. History generally is made up not merely of grave upheavals but also, and above all, of slow gestations, obscure and latent fermentations, gradual and imperceptible erosions, through which existing institutions vary greatly in their real efficiency, while remaining formally unchanged. One who penetrates to the essential quality of the life of States will perceive at every step traces of this perpetual crisis which is simply law immanent in human history. Nothing is therefore more erroneous than to consider every existing State as having in itself its full and adequate justification; nothing more inexact than to consider the existence of a definite political power as a proof that by it all the exigencies and aspirations of the minds to which it is applied are satisfied; nothing, finally, less philosophic than to adore *a priori* any fact whatever as the perfect realization of an ideal—especially the ideal of justice.

This is the fundamental reason for our rejecting those dogmatic definitions of the State which, uncritically and without distinctions, affirm, often in a wilfully obscure form, like the answers of the Sibyls, the absolute value of the State as such. In this sense the Hegelian definitions, as we all know, are typical: "The State is the reality of the ethical ideal, the

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ethical spirit in as far as it is will manifested, evident to itsel substantial; thinks and knows and carries out what it knows a far as it knows." [16] "The State is ethical substance, consciou of itself." [17] "The essence of the State is the universal i itself and for itself, the rationality of will." [18]

Those who know (and who does not?) what horrible an atrocious injustices have been done throughout the centuries b the State, and in the name of the State, cannot but feel in th depths of their consciences a profound repugnance for suc formulae, which under a veneer of idealism hide abject mate ialism and a real denial of those ideal values which can alor make life precious. We have characterized as foolish or ma the systematic contempt of the State; but not less illogical an immoral is the supine and fawning exaltation of every existin social power merely because, being relatively the strongest, i a certain place and time, it constitutes a State.

If it is true, according to a famous maxim of Vico, th "this civilized world was certainly made by men", the Sta too, as a human product, must be subjected to the tribunal reason; and we cannot, without abjuring reason, qualify an form of State whatever, *a priori,* as legitimate.

The determination of the criterium of valuation of politic reality may be arduous, but the secret voice of conscience tel us that it is possible and even incumbent on us. Deliberatel to give up the attempt at a right solution of such a proble would really mean betraying our consciences. If in this a duous research we make mistakes, these will be redeemed, a certain sense, by the purity of our intention and the loftine of our aim.

In the first place, then, those philosophic positions, appa ently antagonistic, but in reality coincident, which under th name of absolute idealism or of materialistic positivism agnostic positivism, affirm the exclusive value of the histor fact, with regard to the State, are equally at fault. Not eve State power is, as such, legitimate. This means that, abo

[16] Hegel, *Philosophie des Rechts*, § 257.

[17] Hegel, *Encyklopädie d. philos. Wissenschaften*, § 535.

[18] *Ibid.*, § 537.

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the laws which emanate from the State, constituting the so-called positive law, there is another law, the law of justice, which may be violated in fact, even by the State, but never abolished in its essence and in its value as an idea. Only by conforming to this supreme law can the State, like the individual, acquire that ethical dignity and that ideal seal which the schools just quoted would wrongly attribute to all manner of State existence and conduct.

It is clear that, in giving a theoretical definition of what properly constitutes the true State, we must also necessarily solve, or try to solve, the problem of the relations between State and individual, since it is precisely these which form the basis of all political organization.

Only in as far as the public power preserves an impartial and just measure with regard to the individuals composing it, in conformity with their nature, is it possible to recognize the rational legitimacy of the power itself. To admit that the State is the absolute master of the individual would be to fall, in another way, into the same mistake as that we have just confuted: that is, the elimination of every possibility of distinction and of valuation respecting the structure and the activity of the State.

For the same reason we cannot admit the contrary theory, which is that ethically the State depends on the arbitrary power of the individual. It is necessary, in respect of this also, to rise above the realm of mere facts, that is above the empirical sphere, to that of deontology, or the realm of eternal ideas.

In the history of political doctrines a myriad of errors derive precisely from this, that the human will has been considered in what it has of the empirical and accidental: as *voluntas ambulatoria,* which means, as simple free will. If we do not succeed in recognizing (as gnosiological criticism teaches) in individual nature itself a transcendental element, necessary and eternal, which constitutes its law, the conception of the State proves inevitably to be destitute of true ethical value and is abandoned to arbitrary decisions, whether one starts from the consideration of the public power or from that of the individual will. In particular the exclusive and one-sided

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consideration of empirical individualism, putting the State at the mercy of the changing claims of the great mass of individuals, has raised very grave objections, both theoretical and practical, against individualistic doctrines. These reactions, as often happens, have degenerated into the opposite errors; that is, into the systematic denial of the individual and of individual rights where the State is concerned.

The resulting knot is almost inextricable; there is only one means of untying it and that is by distinguishing the finite from the infinite in our nature, the *homo phaenomenon* from the *homo noumenon;* the empirical from the universal subject which is to be found, and is inexhaustible, in every individual.

IV. If, thus distinguishing, we consider the essential elements of the subjective being, since they are necessarily common to and identical in all individuals, we have a secure basis for the conception of the State, that is to say the State "according to reason" or, what amounts to the same thing, the State according to justice. Where empirical reality refracts into innumerable varieties of appearances, rational truth is uniform, and whoever studies this element, either in the individual or in the State, will find that the rationality of the one coincides with that of the other. The individual as a rational being, has the character of autonomy, that is, he has in himself the absolute principle of an order of determinations which transcends the world of experience. A juridical system founded on the recognition of this metempirical or absolute character of subjectivity in general, has therein its own principle, equally absolute and equally rational.

The subjectivity of the State, which precisely constitutes this system, necessarily meets and comes to terms with that of the individual. But let it be noted that by the State we do not mean here the center or the subject of *any* juridicial arrangement, that is to say the greatest power in fact, from which proceed the positive juridical norms of a society of any sort whatever; but the optimum State, or the ideal State, which represents an archetype or a pattern of a deontological order, just as the law of justice, understood absolutely, constitutes a touchstone or model compared with positive juridical laws. In

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a certain sense we may regard existing laws as attempts at confirming the laws of justice, and similarly, existing States as attempts to confirm the ideal State. But nothing could be more contrary to truth than to identify, *a priori,* these opposite terms; that is to regard all data having reference to experience as being of absolute value. In doing so we should mistake, through a gross paralogism, the foundations and methods of ethical discipline for those of the physical sciences: we should, in short, submerge and sink the world of what ought to be in the world of what is.

The State, thus understood, is the ideal converging point of that subjectivity which is proper to all individuals who coöperate uniformly in a system of life. Its entity consists precisely in this necessary act, by which individuals are collected together and concentrated, reaffirming their primitive autonomy which is common to all and identical in all. This in fact renders possible the new and superior unity which, however, cannot but reflect and reaffirm in itself the uniform elements from which it results. To speak more clearly, the absolute character of the person is bound to be recognized by the State, when this is rationally conceived and constituted; just as the person in his rationality cannot ignore the State, from the moment he enters into relations with other persons. We perceive, in short, a sort of mediation, by which the natural rights of individuals are collected in a single authoritative expression, and give place to a new entity which, as far as it truly exists, accepts, consecrates and reaffirms the same rights. These seem then, however, to be positive rights, just because, after this concentration, they show themselves to be an emanation from the common center.

This is the profound sense in which, in our opinion, we must understand the theory of the social contract. The criticisms directed against it do not touch the essential nucleus of the truth but only certain imperfect and erroneous formularies, derived partly from the insufficiency and poverty of language which often oblige us to resort to metaphor.

Thus it is evident that only as an approximation, and that through the lack of a suitable word, does one speak in this con-

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nection of a "contract". This, for experts in civil law, requires the demonstration of a certain agreement; while the necessary convergence of individual rights into a common center, which constitutes the State, requires, simply because it is necessary, no demonstration. The adherence of the individual to the State is categorically incumbent on him from the moment he enters into relations with other individuals, for the State is none other than the rational formula of this relationship, in so far as it is juridical.

The consequences of this doctrine are, even practically, most important. If there is an immanent law which constitutes the entity of the State, this law cannot be abolished either by an act of command of the central power, or by any resolution of the majority, or even by the totality of the individuals. The rational bases of the State cannot be at the mercy of an empirical demonstration of free will. The quality of personality belonging to every subject cannot be a matter for the votes or resolutions of the others, nor can the subject himself renounce it, even if he wishes to do so, because the ethical law itself never consents to denying its own nature. The most baneful error of all the democratic systems is just that of believing everything in the State to be matter for valid resolutions declared by any majority whatever. There is unfortunately in majorities an unhealthy tendency to sacrifice minorities, just as there is an egoistic tendency in the strong to sacrifice the weak. But it is precisely against these tendencies that the law, in its main points, makes a stand.

The right of one man is as sacred as that of millions.

A State which does not recognize the juridical equality and the fundamental autonomy of all its components is an illegitimate State. Nor can it be admitted that a certain method of organization of the State authorities makes the validity of these principles dependent upon any contingent manifestation of will.

V. The problem we have set ourselves to consider is still not completely solved. If it is true that the State cannot legitimately operate except as the organ of the equal autonomy of its components; if this concept represents, so to speak, the

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resupposed ideal of any manifestation of the will of the State, ıly an internal limitation and a condition of this will are dicated and not yet its own end.

The fact that the State is the juridicial synthesis of human ersonality does not mean that it must sit perpetually contemplating this intrinsic quality, with a sort of ascetic or fatical immobility, like those Eastern fakhirs who remain for ears absorbed in the contemplation of their own navels. The tate must act, must act strongly and continually giving to ıch of its operations the imprint of its own being, affirming erennially its quality as the synthetic expression of the rights all men. This means perpetual labor, for the reason, above l others, that human rights in their concrete manifestation e always being attacked and often violated; hence the need constant vigilance and reintegration.

But it is erroneously believed by certain eminent thinkers ıat the work of the State should be limited to this function.

To overcome the "dead letter" of many systems of juridical hilosophy it is necessary to remember that the human being oes not consist only of those transcendental and abstract eleents, necessarily identical in all individuals, of which we ave already spoken, and that they are already resolved in a ndamental juridical determination. There are also, and ere must be, concrete and "historical" expressions of perınality that are developed variously in the fundamental texre of life and that are also the cause of juridical relations orthy of protection, as long as they do not come into conflict ith the aforesaid fundamental exigences.

If it sufficed to consider the State in its pure universality, *b specie aeternitatis,* or as we usually say, in the abstract, all tates would be absolutely identical, which means that they ould have no history. The same may be said of individuals, hose abstract personalities are identical, but whose attitudes life vary with their characters and their activities, this being hat constitutes life. Only a false philosophy would find an curable contradiction in what is only a double aspect of all ıman nature; the particular and the universal, the contingent ıd the necessary, the transient and the eternal.

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It is as erroneous to ignore the universal and common ele ments of our nature, through regarding too exclusively it empirical aspects, as it is to neglect, by an opposite one-side view, those concrete and historical elements which make up th special character of each individual, and hence each society an State. Thus if, as we have pointed out, the ideal scheme o the State results from the essential elements of personality, it living and concrete being also results from the characters o those who compose it and above all from those character which are generally common to those individuals. On th necessarily uniform background of human nature (that is, th elements which constitute the conscience and which recur i all men equally) a certain national individuality is thus de signed and this is made up, precisely, of the sum of the psy chological and, up to a certain point, also the physical char acteristics of the individuals, these being passed down fror generation to generation of those who belong to the sam system of life.

If the State in its essence represents the center of this system the meeting place of individual subjectivities, and the suprem power from which radiate the regulations of the system itself it, as a living reality cannot but be the organ of that aggregat of common traditions, beliefs, memories, aspirations, whic constitutes the national character of a people.

From this is derived a series of offices which must be fille by the State, always in the form of, and on the foundation of law—offices, however, which go much beyond the simple pro tection of individual rights, as we have already seen fror these notes. The State must be the organ of law but also, fo that very reason, the guardian of the national character, an the promoter of its development.

Everything that rises above the limits of the forces and th life of the individual and has value for the continuity an development of the nation, finds in the State its natural orgar All the highest aspirations of human nature that appear o the surface of the individual conscience, as inclinations an conjectures rather than as actual reality (for, according t Vico, our being is "a *velle,* a *posse* and a finite *nosse* whic

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ends towards the infinite"), have a certain degree of fulfilnent only through the centuries; and this collaboration must e supported and guided by the work of the State.

As Benito Mussolini has said, "the State is not only present, ut also past, and above all, future. It is the State which ranscends the brief span of individual lives and represents he immanent conscience of the nation. It is the State which ducates citizens in the civic virtues and makes them conscious f their mission, exciting them to unity; it harmonizes their nterests in justice; it hands down the conquests of the mind n the sciences, the arts, in law, in human solidarity." [19]

In this sense it may be said that the State must be "the thical State", not in the pseudo-idealistic sense of certain chools, as if every State *as such* were necessarily productive of ood, and were necessarily the just protector of law, the wise *ustodian of the patrimony of culture and the efficient promoter* f the development of the national character; but in the sense hat such is the ideal State, to which the empirical State must ndeavor to conform. If it falls away from this ideal, and iolates the law of justice, pursuing private ends and thus buse that preponderant power which suffices, strictly speakng, to give its decisions formal statutory character; if it abanlons or tramples upon the weaker individuals, even under the loak of legality; if by oppression, want of wisdom, or even imple inertia, it endangers the preservation and development f the goods, especially spiritual goods, which are the patrinony of the nation, the problem of the legitimacy of resistance, r even revolution, arises. This problem remains insoluble, nd indeed incomprehensible, for those philosophies which bow lown "a-prioristically" before every form of State, and adore t as "ethical" in every case; remaining thus blind and mute n front of the bloody history of those peoples who only through evolutions were able to secure a régime on a higher plane of iberty and justice.

Though this may be superfluous for those who have followed s thus far, nevertheless to eliminate all possible misunderstanding, it is well to declare once more that no claim of the

[19] Benito Mussolini, *La dottrina del Fascismo* (1932), pp. 19-20.

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ethical mission of the State can legitimize any alteration of its own juridical character, in the preëminent meaning of this term. No benefit of any sort can be willed by the State at the cost of injustice, for justice is its highest good, this is the fundamental reason of its being. The universal end of justice can and must be harmonized and coördinated with private ends, just as the foundations of a building must be proportioned to, and harmonized with, all the structure above it. To sacrifice the good of State justice in order to pursue any other apparent or accessory advantage would be an error similar to that of an architect who, in order to add some ornament to the façade of an edifice, should make use of a part of the foundations.

VI. An ulterior consequence, which derives from the principles just set forth, is that the State, in its rational nature, is bound to recognize other States in the same way that it can insist on being recognized by them.

The ideal convergence of all the entities into a common center, that is a universal or cosmopolitan society of mankind, is a necessary postulate of the reason, as a corollary of that same fundamental law of justice from which proceeds the necessary relationship between the individual and the State and between individual and individual. The nexus between State and State must not be conceived as the effect of something merely arbitrary, or of a contingent or empirical agreement. This would be a false contra-state conception, of no greater value than the one we have already repudiated, by which the State would have its origin and foundation in a chance agreement drawn up among individuals.

Without any empirical demonstration of will being necessary (a demonstration which, moreover, could never happen adequately) the individuals unite in the State, and the States in the society of States, by virtue of the categorical imperative which results from the very constitution of their nature. It is possible for such an exigency to be violated or ignored in fact, as it is possible, for example, for any individual to transgress the moral and also the juridical law; but the law is not thereby rendered less valid as an absolute requirement of the deontological order. Thus one may well admit that the so-called

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nternational community of States and even the organism of he League of Nations, as it has been positively constituted, is ar away from the ideal postulate; but the latter is none the ess the distant and not-to-be-disregarded presupposition.

It is well known that the attempts to deduce from positive eality, in the relations between State and State, the maxim f the obligatory nature of covenants (*pacta sunt servanda*) ave failed miserably, because this reality can only offer us greements made in fact, and respected in fact; it might also, n the best hypothesis, present us with an agreement having or its content the will that contracts already stipulated, or to e stipulated, are to be carried out; but on what, even in such case, are the validity and obligation founded? Evidently ie principle of the obligatory nature of pacts or treaties can- ot consist in the simple fact of a manifestation of will, what- ver its content, but must precede it logically. It can there- ore be deduced by a transcendental consideration which rises bove the fact to pure deontology.

The law of the social nature of States is, in its substance, lentical with that of the social nature of individuals: it im- oses, that is, the reciprocal recognition of personality, which to say, autonomy, establishing thus a principle of juridical quality as a basis of all concrete relations and communica- ons. This reciprocal autonomy certainly finds a limit in the ompulsory respect of that law which is imposed ideally on ie State in its very structure, and hence on all its possible ctions. An unjust State, to speak more clearly, cannot claim be respected by others in its injustice, and we cannot there- ore admit, in an absolute sense, the so-called principle of non- tervention, which is, however, accepted generally by the posi- vist school of international law, and was accepted, up to a rtain point, by Kant in his essay on perpetual peace.

Considered absolutely, the principle of nonintervention in ie relations between the States is equivalent to that of the ternal order, that is, of the relations between States and in- viduals; it is the prohibition of revolutions and resistance to uthority. Such rules may have a certain relative value, as ements of a positive juridical system.

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But in a philosophical setting, or with regard to ideal law which is of greater value than any positive law, an interventio can be legitimate where the elementary principle of justice, i the relations between State and State, and also State and indi vidual, has been violated; just as, in certain conditions, a revo lution may be legitimate when it aims at bringing about juster internal constitution in any single State. It should b added that, through their necessary interdependence, the dis turbance of the internal order cannot but have reflexes in th international order.

By this we do not mean to assert that in every case an contingent act of injustice renders resistance and conflict law ful, when these arise through the impulse or private judgmer of any particular individual, or any particular State. Else where we have had an opportunity of setting forth certai criteria to apply in such cases and we need not repeat ther here. Such guiding principles are, moreover, well known t those who remember, for example, the profound consideratio of the question by St. Thomas Aquinas in his *Summa Theo logica* and in the first book of the treatise *De Regimine Prin cipum,* not to speak of other classical texts on the philosophy c law.

VII. Having thus drawn, as far as we are able, the idea lineaments of the State in itself, and in its relations to ind viduals and to other States, it remains for us to touch on th last aspect of the problem, which is, from the practical poi of view, not the least important. How ought the State's wi be formed and put into practice in concrete cases? More pr cisely, which will is properly to be regarded as that of th State?

As in every State there is always a central power which ex presses the preponderant social will, one might be led to thin that only the direct imperative manifestations of this pow constitute the will of the State and that, in other words, th whole of the life and activity of the individuals composing th State must draw from these manifestations their rules of co duct. Thus, in itself, the will of the individual as well a that of groups of individuals comprised in the State and sul

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ordinated to it, would be without juridical importance. A logmatic construction of this sort is in fact more or less openly ormulated by certain theorists of law, who believe that they hus follow rigorous logic and at the same time assure greater tability to the structure of the State. It is nevertheless beyond loubt (nor does this escape the notice of these same jurists) hat from the will of individuals and their organizations contantly arise decisions which tend to have a juridical or "normative" value. The problem then is whether, and how, these lecisions can exist in juxtaposition with those which spring rom the central or State organs in the strict sense. We note specially that in any phase of juridical evolution the decisions nade by these organs have always recognized, with more or ess latitude, and confirmed as decisive, the expression of the vill of the individuals. It is easy to see that this cannot be by mere chance, but represents on the contrary a necessity for ny juridical order. It would be indeed even materially impossible for the State to decide, by means of its central organs, ll those innumerable relations and dealings of a juridical ature which make up the web of everyday individual and ocial life.

There remains, then, one possibility only, that the State, by a ormula, tacit or expressed, may correlate, within certain limits, ts own demonstration of will with those emanating from individual consciences in the field of law. This correlation is noreover delineated in fact, even before the State organs begin o interfere with private juridical manifestations, and give notice, so to speak, of their existence. Thus the fixing of imits and the conditions to which the validity of these manifestations is subordinate, happens spontaneously, in the midst f private and social life, by virtue of the same motives and he same needs through which the organs of State afterwards ntervene to formulate systematically the matter in question.

It is very sure that, as long as it fulfils its function properly, he State cannot hand over the establishing of relations between ts subjects to arbitrary control; the autonomy of the individual n these relations must be preserved, and if need arises, consolilated, with the assistance of the State. But, for the same

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reason, the State cannot, and must not, substitute itself, with its own decisions, for that autonomy, refusing thus the spontaneous collaboration of the individual in the maintenance and development of juridical order. To subject to unjustified restrictions the manifestation of subjective autonomy, even in the assessment of private relations (especially in the question of contracts), would mean, not only violation of the natural right of the individual, but also impoverishment of the entire system of juridical relations, and of the relations of life in general of which law is an element.

With regard to this, at least as a rule, it may be said that there is no disagreement in the juridical schools and in the systems of positive law, excepting on special questions of method and technique which we may here leave out of consideration. Much graver problems, and greater disagreements present themselves when it comes to considering, with regard to the State, the tendency of individuals to associate and organize themselves, or give birth to collective bodies, institutions or corporations, capable of developing their own normative activity. If we may be allowed to recapitulate briefly the results of previous studies on this vast subject, we can affirm that the tendency of individuals to unite in collective bodies less than the State and having their own private ends is as legitimate as it is natural; that it is equally natural and legitimate for these bodies as well as for individuals to have the capacity of producing, almost by spontaneous generation, juridical resolutions as much in the sense of subjective powers and claims as of obligations; that all these resolutions tend, as a rule, to grow into systems, and finally into a single system, the center of which is precisely the State. This exercises, so to speak, an attraction, as much for the single resolutions as for the minor systems; and it manifests itself in varying ways and with varying efficacy in the complicated ways of history. It is also possible that certain juridical systems, more or less embryonic existing within the State, may withdraw themselves for a certain time from the State itself and sometimes assume an antagonistic attitude towards it. By a hypothesis, if one of these systems should gain the ascendancy, the consequence would be that it would become the State.

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But in general, through incessant toil, and thanks to the need of homogeneity and cohesion among the various rules that shape the life of a people, the State progressively succeeds in impressing its seal on all the juridical formations, individual, collective and corporative. These determinations acquire, in short, little by little a character always more statutory; while, just because of the systematic need of unity, those formations, from the moment they are attracted into the orbit of the State, are conceived and represented dogmatically as simply the effect and exterior manifestation of the will of the State itself.

VIII. There is no doubt that with regard to this process the State has its own function to fulfil, and what this function is, is shown clearly enough by the principles already set out. Those doctrines which, starting from dogmatic preconceptions, throw doubt on, or deny outright, the juridical character of whatever is formed independently of the State, are to be rejected as insufficient and erroneous. Such doctrines on one side fail to recognize the logical essence of law, and on the other the essence of the State. To be rejected also are the doctrines (if we may be pardoned this summary verdict, since it would be impossible to expose at length all the demonstrations and arguments on which these judgments are founded) of a character rather political than scientific, which attribute to the State the power and the right of prohibiting the formation of corporative bodies, or of taking away from them their juridical productivity which derives from their own nature. It is true that, while the State can and should watch and operate in such a way as to prevent such bodies (as well as private individuals) from degenerating and offending fundamental juridical principles, of which it is the supreme expression, it must also second and favor their activities in general, and especially those of a normalizing character. Here also it is a question of a natural and fruitful collaboration, and this the State can never give up without loss to itself; because those juridical energies which, seconded and attracted by the State, convert themselves into physiological vigor for its organism, would become instead causes of pathological disturbance if they were, without reason, kept outside and not assimilated by the State.

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The dogmatic theory by which no intermediate bodies can be admitted between the individual and the State, is in conflict above all with history since theoretical and practical (these, in truth, are infrequent) attempts to delineate and carry out this theory have always encountered insurmountable objections and difficulties. In practice, even simple restrictions of the right of association have had almost always as a consequence the forming of secret societies in the place of open ones.

Under a purely rational aspect this theory does not bear criticism since association corresponds to a natural need and inclination in the subjective being, and it resolves itself naturally into as many different forms as there are needs and aims in life. Besides, it is intrinsically contradictory to claim that the individual belongs to the State, which is preëminently the expression of society, and that he is to be prevented from belonging to other forms of association which respond to the same fundamental need, and represent, precisely, the intermediate steps by means of which the individual ascends to the State. Nor is it possible always to attribute to the State the office of determining by its own organs the methods and rules of life of private associations, because, in many cases, that would be equivalent to substituting mechanical and artificial means for what nature itself produces in a much more perfect way, as living reality. To cut away the healthy and fertile shoot of the right of collective bodies, or to hinder their development, is to weaken finally the very structure of the State.

All these considerations are suggested whether we start, as we have tried to do, from generally theoretical premises, or, by following, on the contrary, an inductive or experimental method, we attempt to infer from historical events their timely lessons. The general conception of the State and its relations with the individual have led us to recognize as conforming to the State itself that process of subjection by which it centralizes in itself the spontaneous spiritual energies of individuals and minor groups, coördinating them and progressively imprinting on them the State character. In other words it is necessary for individuals and social groups, while keeping their own natural autonomy, to acquire a State conscience, so that all

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heir actions and decisions harmonize with the more general uling principles which emanate from the central power; in his way they themselves become to a certain extent organs of he State, or they are assimilated with these organs, even if hey have no official name. On the other hand historical experience, especially of our own times, has shown the enormous danger that arises from the free play of unbridled power in syndical or corporative organizations. The life of almost all nodern States has been at some moment upset and almost paralyzed by the agitations of these conflicting forces. This does not imply that States should be condemned *a priori* to fight against such forces, as these often, if not always, express the real needs and most profound aspirations of human nature. Not in a blind reaction against such reconstructive tendencies nor in an agnostic *fin de non recevoir* opposed to them by the organs of the State does the salvation of the latter consist, but n a wise and assiduous work of political education, of elevation and of organization by which these very tendencies and aspirations, instead of menacing and hurting the State, contribute owards its renewal. Benito Mussolini, with profound wisdom, said once before an important assembly: "Either you place he people in the citadel of the State, where they will defend t, or you leave them outside, where they will attack it." [20]

IX. Those who study the structure of the corporations of he new Italian State superficially may be led to believe that hey merely represent a return to the organizations which flourshed under the same name, especially in the Middle Ages. If his were the case the principles of a rational order in the constitution of the State we have tried to expound would be completely contradicted; and that progressive movement which, at he cost of so many efforts and so much bloodshed, has assured nodern civilized peoples a régime of juridical liberty, would be stopped or turned back.

But for those who really observe, the truth is just the opposite. The corporative order, which in Italy is in course of being formed, is intended to give added protection, assistance and autonomy to the workers, both professional and manual,

[20] Mussolini, *Il nuovo Stato unitario italiano* (1927), p. 110.

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without in the least destroying the fundamental guarantees tha constitute the precious heritage of bygone ages. In our time the importance of labor in general has increased so much tha its régime necessarily had an important place in the structur of the State, otherwise the multitudes of workers would inevit ably have organized themselves against the State—this ha happened in many countries, and, for a time, it happened i Italy also.

Long and painful experience has proved that individualisti schemes concerning the rights of men and citizens, while havin an undoubted foundation of truth, were inapplicable in thei abstract nature to the extremely complicated web of social life incapable therefore of really protecting the concrete individua already constrained, by the fact of his birth and the close ne of his activities and necessities, to live in definite relations o aggregation and subjection.

The criticisms of the socialists against liberalism were ofte erroneous and unjust, but they had their share of truth inas much as they declared, on the basis of facts, the inadequac of abstract proclamations of the right of the individual to solv the concrete problems of economic life; inasmuch as the showed the acute disagreement between the formal juridica equality of all citizens and their extreme inequality in fact, th greater part of the population, the so-called proletariat, bein left to the mercy of a minority and obliged by the stimulus o hunger to accept " freely " a sort of slavery, very little differen from that of olden times. More than these criticisms, and mor than any doctrinal formula, hard experience had shown th workers that only in one way could they balance, at least partly the greater power of the few who imposed their definite condi tions of labor under the guise of an apparent equality and a apparent contractual liberty: that way was associating them selves together and counteracting the force of capital by tha of numbers. Whence derived those forms of struggle, some times ruinous like the strike, which have distinguished th troubled economic and political history of the age nearest ou own.

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A new synthesis, a new discipline was necessary, and this the new Italian State undertook. It has not abolished the great principles (particularly dear to us Italians because consecrated by the blood of numerous martyrs) of the equality of all citizens before the law; of the rights which belong indiscriminately to every man, including non-citizens; of the exclusive primacy of law, the expression of national sovereignty which is above all arbitrary action, even of the organs of government. But to these principles it has added others not less fruitful, such as that called the "Charter of Work" of 1927. "Work in all its forms, organizing and executive, intellectual, technical and manual, is a social duty. Only this entitles a man to the protection of the State". The right of association has for the greater part been preserved: "Syndical or professional organization", continues this same document, "is free". But it adds, "only the syndicate legally recognized and subject to the control of the State has the right to represent legally the whole of the class of employers and workers through which it was constituted; to protect its interests with regard to the State and other professional associations; to draw up contracts of work obligatory for all who belong to the category, impose their contribution and exercise with regard to them the delegated functions of public interest."

There has thus been constituted, or rather there is being constituted, a practical equality between the divers factors of production (employers and employed) united in the aim of cooperating for the good of the State which is common to them all. The State does not restrain spontaneous productive energy, but watches over it and favors its organization, giving it the power of dictating regulations which have thereby a State character. The "Charter of Work" declares explicitly that the corporations which constitute the unifying forces of production and represent their interests integrally, "are recognized by law as organs of the State." This does not mean the suppression of any power of individual initiative: the same "Charter of Work" states that "the corporative State considers private initiative in the field of production as the most useful and efficacious instrument in the interests of the nation."

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The State has, and preserves in conformity with its nature, a function of essentially integrating individuals. It therefore intervenes as the supreme organ of law also to prevent possible conflicts in the labor question, after the professional or corporative organs have brought their attempt at conciliation before it. The institution for this purpose is the "Magistracy of Work" (previously created by the law of April 3, 1926) and this shows plainly enough how the realm of law has been carried into a subject which hitherto had been abandoned, in practice, to open or masked oppression and violence.

The essential principle of this new corporative system, in which it differs from those, apparently similar, of other ages, lies in this: that the corporative organization introduces itself as a middle term between two theoretical major terms, the individual and the State. These terms remain clearly defined and unshaken in their own juridical structure and in their fundamental relationship. Even before displaying his activity in the field of work, the individual has a juridical personality and, for that reason, an infinite value. The State acknowledges this value and it is just from this necessary acknowledgment that its legitimate sovereignty derives.

It is only owing to this dialectic synthesis of liberty and authority that the State is properly "the State of Law" and such the Fascist or corporative State means to be. We may here recall the words of Mussolini, "We do not go back. The Fascist doctrine has not chosen for its prophet De Maistre. Monarchical absolutism *was,* and so *was* all ecclesiolatry. So *were* feudal privileges and divisions into watertight compartments or castes." [21]

Is it perhaps necessary to remind ourselves that in the times of the old corporations a precise definition of the juridical figure of the citizen was lacking just as there was no definition of the State as a constitutionally sovereign entity? That which distinguishes the medieval corporations is just the fact that they did not presuppose the quality of citizenship, and on the other hand they did not recognize the juridical sovereignty of the State over them. They tended, indeed, to become States within

[21] Mussolini, *La dottrina del Fascismo,* p. 17.

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the State and all the more easily substituted themselves for the latter in that the State at that epoch was almost absent, being enfeebled and divided by the conflicts among the different powers.

If the present-day corporations were similarly cut off from the foundations of the State and of the individual and anachronistically invested with arbitrary power in their relations both internal and external, the corporative experiment would never have had deep roots and would have been doomed to failure. But those very people who proclaim, not always in good faith, the degeneration of the old corporations, protest at the same time against the excessive and authoritative power of the Fascist State; without perceiving the intrinsic contradiction of criticisms which, by neutralizing each other in turn, demonstrate their want of a solid foundation.

We do not intend dogmatizing on all the special arrangements of the present corporative order. Being still in course of formation, it has, as we have said, a certain experimental character and daily improves by means of the hard test of reality.

But we do not doubt that, in its fundamental significance, which we have just tried to interpret, it responds to the surest dictates of juridical philosophy. From the conscience of the individual is developed the conscience of the State; law, which is an intersubjective rhythm of the spirit, ascends from the particular to the universal; and the formation of a juridical system presupposes, precisely, the gradual expansion of the social sense. The life of this system is physiologically healthy when the dictates of the individual consciences are led to infuse themselves harmoniously and flow like lymph through every part of the organism. Any arbitrary oppression of individuality and limitation of social development results necessarily in a weakening of the structure of the State.

X. Every sort of activity, in relation to the various aims of human nature, must by its intrinsic power mold its juridical structure under the aegis of the State, which is its formal unification. The richness and variety of the initiative of individuals and of social groups are not only compatible with, but adapted to, the vitality and vigor of the State organism. Thus

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nobody believes that the family, which is also a middle term between individual and State, disturbs in a harmful way the conditions of life of either one or the other entity. There is, nevertheless, also in the family an order and its own governing center; there is a production and a radiation of rules which comprise civil decisions and even disciplinary sanctions. These rules harmonize with those proceeding from the State, and we may also, in the present phase of the development of law, consider them as a manifestation or delegation of the will of the State. But every student of the history of law knows that family juridical organization preceded the State organization. The State conscience has penetrated, by a slow process, this particular organization, making of it a harmonious element of the greater sphere of society, which is the State.

An exactly similar process has been observed in connection with the professional, syndical or corporative associations, though, for many reasons, this was a later process and cannot yet be said to be completed. But here again we may observe, for instance in Italy, how the autonomous production of professional rules came into contact with the manifestation of the will of the State, acquiring by degrees itself some State character. Through this means a great cause of disturbance in social life is eliminated and a new and deeper harmony is attained.

Today the question is much discussed, and learned arguments are put forward by Italian jurists, as to whether the so-called "collective work contracts" made by the syndical or professional associations legally recognized according to the law of April 3, 1926 and the Charter of Work, are true and proper contracts or juridical rulings. Against the first theory it is argued, among other things, that contracts are as a rule binding only on those who take part in them (either personally or through delegates or representatives), whereas in this case they are binding on all those who belong to the category, whether they are members of the contracting association or not. Against the second theory it is objected, among other things, that a legislative, or *quasi* legislative, power does not appear to be attributable to those who represent particular interests

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nly, outside the constitutional orbit of the State. We do not ish to enter, at least for the present, into this dispute, which as chiefly a technical or publicist character; nor do we desire) examine here the new elements brought into this matter by ıe recent law of March 20, 1930, and the still more recent law f Feb. 5, 1934 ("Constitution and Functions of the Corpora-ons") which determine the powers belonging, over the Cor-orations, to a central organ, the "National Council of Cor-orations". *On the other hand we do not intend to inquire* ere as to whether the aforesaid doctrinal dispute and the eform of positive law itself, now proceeding (with regard to ther questions as well as this) may not bring about a revision f certain concepts, like those of contracts and norms that raditional dogma has perhaps formulated in a too restricted ıanner. Here, however, as modest philosophers, we should ke to draw a lesson from the very disparity of opinions, or rom the fact that, even from different points of view, a certain ıridical determination may be considered at the same time as n effect of the spontaneous will of individuals and of the will f the State.

In this real convergence we have a typical manifestation of ıat process of association of law with the State, which we have ointed out above. Perhaps this point has not up to the resent attracted enough attention from philosophers of law. he introduction of the corporation into the web of juridical fe, between the individual and the State, is being accomplished rogressively as a fact and is characterized by liberty as well s by necessity. Are there not, in this fact, a revelation of the ense of history and an indication of ethical progress?

If we were allowed to extend our field of observation we ight remark that, in conformity with the principles already xpounded, in interstate relations also a similar process is to e noticed, that is, a tendency towards a new synthesis by hich single States are moving towards the constitution of a ertain juridical unity. The process of organization is here uch behind that of the professional organizations; but the ndency of the States, and especially of the more civilized nes, to coördinate their activities up to a certain point, cannot

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fail to be recognized, however grave may be the obstacle opposed to the formation of an organic super-State unity which in its most perfect expression, would constitute one State fo the whole of humanity.

Every State is, and is considered, in its essence autonomous but only to a superficial view can this autonomy seem to be i conflict with that of necessity, which derives from a rational ethical law.

As the individual is truly free only when he obeys the lav of reason, which he carries in himself, so the State is truly autonomous above all when it obeys freely the ethical necessity of relationship with the other States. The juridical call of th conscience does not stop at the State, but aspires to the coördi nation and universal communion of all humanity. Only whe this is attained will that "thirst for justice", spoken of by St Mark the Evangelist, which is at once the honor and the tormen of our nature, be satisfied. The worship of the ideal of justice comprising all human beings, represents a sort of religion, o which, according to the classical Roman expression, the jurist are the priests. It is only by confiding in this ideal that w are comforted and upheld in the hard, often painful, tas which falls to our lot. The goal may be far off, and certainly not attainable in the brief course of our mortal life, but in th effort to reach it lies the nobility of our existence. It is in th identity of our aims that we find the reason for the profoun sense of solidarity which makes the jurists of all countrie brothers.

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MAN-POWER IN CHINA I[1]

CHINA has two outstanding resources for industrialization. They are abundant labor and a large home market, both functions of the country's huge population. As the consuming power of the home market depends upon the well-being of the mass of the people, man-power becomes perhaps the crucial factor in the industrial revolution.

Powerful forces have disturbed the balance of China's aged agricultural economy, and it can no longer support the population. Famines and floods and civil wars have curtailed the productive power of the land. Cheap machine-made goods from the West have wholly or partially destroyed the subsidiary handicrafts of the farmers. There is a pauperizing excess of agrarian population which must be absorbed. People must get off the land. New occupations are imperative. The tremendous adjustment now taking place in the means of livelihood is one of the vital elements in the present-day disorganization of China.

Reservoir of Potential Labor: Migrants

In a population of four hundred to five hundred million persons, in economic maladjustment, there is an enormous reservoir of possible industrial man-power. China's abundant cheap labor has long been coveted by Western manufacturers and

[1] This article is a part of a study of the industrialization of the Far East directed by John E. Orchard, Associate Professor of Economic Geography, School of Business, Columbia University, under the auspices of the Council for Research in the Social Sciences of Columbia University. The Japanese portion of the study has been published in the volume *Japan's Economic Position* (McGraw-Hill Book Company, 1930), and in several articles, one of which, "An Analysis of Japan's Cheap Labor", by Dorothy J. Orchard, appeared in THE POLITICAL SCIENCE QUARTERLY, June 1929. The present article is the first section of the Chinese portion of the study to be published. It is based primarily upon data obtained in China in 1926-27 and 1931-32 supplemented by reference to available published material. In 1931-32 the author traveled in China as a fellow of the John Simon Guggenheim Memorial Foundation.

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employers. They even have attempted to import it from tim to time into Western lands, but with disastrous social conse quences in each instance, because of its cheapness. In the las half of the nineteenth century, when the United States wa building the great transcontinental railways and there was shortage of native labor, the importation of Chinese coolies wa encouraged, and within thirty years nearly 300,000 Chinese im migrants were admitted into the country. They spread int mines and factories, and the opposition of American labor wa aroused because the laboring hours of the Chinese were so lon and wages so low as to constitute very serious competition t native labor in the same fields. After a good deal of agitation the exclusion policy was inaugurated and the doors of th United States were closed. In Australia a similar story wa enacted. About 1840 some employers brought in Chines coolies to work in the mines. Within a few years they bega to arrive by the thousands, encouraged by shipping companie engaged in passenger traffic. There was a public protest, an immigration restrictions were enacted that have effectuall closed Australia to Chinese labor. Other new lands, Canad and New Zealand, have also passed exclusion legislation agains this labor which the West both wants and fears. The Britis in South Africa, in 1904, sent agents to China to recruit coolie for the working of the gold mines in Transvaal. In less tha three years, more than 51,000 Chinese were imported, but loca opposition soon developed there, as it had in America and i Australia, and by 1910, the British government had put a end to the importations and had also repatriated the last of th recruited labor. Thus another outlet for Chinese labor wa blocked.

In the meantime, the forces of political and economic disin tegration were working in China. Famines and floods and dis organization increased the pressure of the population upon th land. Tens of thousands of Chinese felt impelled to leave thei native land to seek a living elsewhere. They turned to th cold north and to the warm south. With the decline of th Manchu dynasty, Manchuria became available to Chinese col onization, and with the development of estate agriculture an

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n mining in the south, the islands of the southern Pacific elcomed Chinese labor. Chinese immigrants came to Malaya nd to the Netherlands East Indies, not only as free but as con-ract laborers for the mines and plantations, and also as agri-ulturists, as traders, as craftsmen and as laborers in public orks construction. Between 1881 and 1929, the number of hinese arriving at the port of Singapore each year averaged early 150,000 persons. In the early years the total was under 00,000; in 1926 and 1927 it was around 350,000.[2] The umber of Chinese annually entering the Netherlands East ndies in the decade 1921-1930 exceeded 44,000.[3] In the same ecade the yearly arrivals of Chinese in the Philippine Islands veraged nearly 16,000,[4] and in Siam 91,728.[5] In Indo-China or the years 1923-1931 the average was 58,370.[6] For all hese countries of the southern Pacific, the average number of hinese entering the ports was well over 440,000 per annum n the decade ending in 1930-1931. Most of the immigrants ave come from South China, from Kwangtung, Kwangsi and ukien. They have migrated back and forth in a continuous tream, but with a permanent residue remaining in the foreign ountry each year. The Chinese Overseas Affairs Committee f the Nanking Government estimated in 1934 that nearly ,000,000 Chinese were residing abroad, of whom over ,000,000 were in the countries of the southern Pacific.[7]

The migrations to the north have come primarily from Shan-ung and Hopei, often stimulated by famines. There are no ccurate statistics of the trek to the frontiers of China, but an stimate of the number of Chinese immigrants arriving at the orts of Dairen, Yingkou, Antung and Shanhaikwan, for the ight years 1923 to 1930, averages about 754,000 a year.[8] In

[2] *Annual Departmental Reports of the Straits Settlements.*

[3] *Statistisch Jaaroverzicht Van Nederlandsch-Indië*, 1925-1933.

[4] Philippine Islands, *Annual Report of the Insular Collector of Customs*, 932.

[5] *Statistical Year Book of the Kingdom of Siam*, 1930-1931.

[6] *Annuaire Statistique de l'Indo-Chine*, 1923-1929, 1931-1932.

[7] *Chinese Economic Bulletin*, vol. XXV, no. 9, September 1, 1934.

[8] The South Manchuria Railway, *Fourth Report on Progress in Manchuria* 9 *1934.*

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two of these years the exodus to Manchuria was reported t be over a million a year. It is probable, therefore, that in th decade before 1931, well over one million Chinese left thei homes each year to migrate abroad or to the unfriendly north ern frontiers of China, in order to earn a living. This floatin surplus population is greater than the total annual increase i the population of Japan.

Since 1931 the Japanese have gained control of Manchuria and the Chinese returning to China proper in 1932 exceeded i number those going to Manchuria. Under the new rule it ha become uncertain to what extent the Chinese may look to thei lost frontiers to absorb the surplus population of the northern provinces. There have been rumors that the puppet state o Manchukuo will not welcome Chinese immigrants, and on th other hand, the Japanese are said to have recruited thousand of Chinese laborers from Hopei and Shantung to rush to com pletion certain communication schemes in the interior.[9] A the same time emigrants from South China have met with th world depression on the tea and rubber plantations and in th tin mines of the South Seas, and hundreds of thousands o overseas Chinese have returned to China because of unemploy ment abroad. It was estimated that more than one million re turned to China in 1933.[10] China's surplus labor is now pilin up within the country, and with reduced opportunities for live lihood it will undoubtedly add to the banditry, piracy an agricultural unrest.

Excess Farm Population

In addition to those who have had the opportunity to migrat abroad there are other millions that remain as surplus labor o the farm, unemployed and underemployed. Some of thes people are being brought into the cities as factory workers, bu modern industry has not begun to absorb the potential man power that is there. If mechanization is brought to agricul ture, more thousands will be added to the surplus of agricul

[9] *New York Times*, March 28, 1934.

[10] *Ibid.*, March 11, 1934, according to the annual report of the Worl Chinese Overseas Association.

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ural labor. Primitive methods of irrigation are already beginning slowly to give way to gasoline motors, and one small motor can do the work of several men turning treadmills or raising water with swinging bamboo baskets. Mechanization of ploughing and harvesting, even on a simple scale, will further reduce the man-power required to work the land. Agriculture in the future does not promise to absorb as many workers as it does at present.

In normal seasons the farms are overmanned. With political turmoil, flood prevention and irrigation devices have been neglected. Banditry and civil wars have wiped out surpluses and reserves. Rains fall too lightly or too heavily. Almost every year some part of China sees famine. With famine come the refugees. They leave the devastated land by thousands and hundreds of thousands for more fortunate areas where there is hope of maintaining life until the famine passes. They come especially to cities and settle in the empty spaces along river banks and railways, build huts of straw or matting and seek from the community work or charity, whichever may be had. In the great drought of 1920-1921 in North China, it is estimated that 20 million people became destitute refugees.[11] The number of farm people affected by the Central China flood of 1931 totaled over 25 millions,[12] considerably more than a third of the whole Japanese population. Of these 25 millions, 7 millions had to be cared for by public relief and as many as 1,750,000 were given relief employment on the dykes and emergency reconstruction work. The rest found work or relief through private means. In 1933 the Yellow River flood affected between 2 and 3 millions more in Shantung, Honan and Hopei. In 1934 a severe drought in Hupei rendered over 3½ million people destitute.[13]

When the floods subside or the rains come, and famine has passed, or when the fighting armies have moved out, the

[11] Walter H. Mallory, *China: Land of Famine*, p. 2.

[12] *The 1931 Flood in China, An Economic Survey*, by the Department of Agricultural Economics, University of Nanking, in coöperation with the National Flood Relief Commission. *Bulletin 1* (new series), April 1932.

[13] *The China Critic*, November 8, 1934.

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refugees—all who possibly can return—stream back to thei farms to take up again the struggle for existence. But afte each calamity, some are permanently divorced from the land They migrate abroad or to the frontiers as free and contrac labor, join bandit groups to rob and plunder for a living become soldiers, or stay in the cities as domestic slaves, prosti tutes, apprentices, coolies or factory labor. Their effect upo the labor market is devastating. Their great need keeps th standards low. Wages are depressed; apprenticeship grows child slavery increases; competition among rickshaw boys transport coolies, porters and stevedores becomes desperatel intense. Some areas are permanent sources of refugee labor notably Shantung, Hopei and that section in Kiangsu an Anhwei Provinces, north of the Yangtze, known as "Kiang pei", or "North of the River". To these areas recruiters g for unskilled labor for large projects, railways, mines, factories The mills of Shanghai look to the North of the River to breal their strikes. It was Kiangpei people whom the Japanes cotton mills of Shanghai recruited at the time of the "unde clared war" of 1932, when their operatives refused to wor and joined the boycott-strike. It was to the perennially famine stricken areas of Shantung and Hopei that Japanese recruiter went for the army of coolies they needed to do constructio work in Jehol and other parts of the lost frontiers.

Soldiers and Bandits

The soldier-bandit population is a source of labor that run into millions. China's army exceeds that of any other natio in the world.[14] It was estimated in 1931 at 1½ million mer more than the French, Russian and Japanese armies put to gether. It is a huge disjointed military force which is utterl incapable of defending the nation and is a heavy drain on th treasury. In 1929, Nanking made very serious efforts to unif the various independent units and to demobilize the exces soldiery.[15] Plans were announced at one time to reduce th

[14] League of Nations, *Armaments Year Book*, 1934.

[15] *North China Herald*, January 5, 12, 1929; February 16, 1929; Septemb 21, 1929.

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army to 800,000 within six months, but aside from political complications, the question of what to do with a million disbanded soldiers was a very important stumbling block. Turned loose without some provision for their livelihood, they might all too readily become bandit material. Soldiering and banditry are closely related. The soldier is often an ex-bandit, the bandit an ex-soldier. Many of the soldiers who distinguished themselves as members of the Nineteenth Route Army in the defense of Shanghai in 1932, were reported to have turned to banditry in 1934, following their defeat in the Fukien rebellion in which the Nineteenth Route Army participated. The collapse of General Liu Kuei-Tang's rebellion in North China early in 1934 led his forces, variously reported at 1,000 to 6,000 soldiers and 1,000 impressed civilians, to support themselves in retreat by looting and plundering their way through Hopei and Honan until they were finally wiped out by government forces in Shantung.[16] The bandits of Manchuria, the famous *hung hu tzu* who were the terror and despair of the Japanese South Manchuria Railway officials, even before the Manchurian incident of 1931, were sometimes soldiers, sometimes farmers, and bandits when the kaoliang was high enough to hide their movements. The bandit population is a serious menace to China. There is no possible way of estimating their numbers, but they are legion. They prey upon foot travelers, upon junks and motor launches, river and coastal steamers, motor buses, pack trains and railways. The picturesque old walls of villages and towns are more than ancient relics. They are intended for defense against marauding bandit hordes. The gates are heavily barred at night and it is an unfortunate traveler who arrives on the outside after sundown. It is well recognized that the bandits could be brought under control and their numbers greatly decreased if there were productive economic opportunities to absorb them.

Coolie Labor

Coolie labor is another source of man-power for industry. It is made up of famine refugees, surplus farm labor, unem-

[16] *North China Herald*, January 1, 17, 24, 1934; February 28, 1934; March 21, 1934.

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ployed city labor, ex-soldiers, returned immigrants. It is labo that is ready and eager to work at anything and everything an runs into tens of thousands in the larger cities. In Kiangs Province alone, it was estimated that there were more tha 1,400,000 coolies in 1922.[17] Chinese cities move on coolie power. Coolies are the carriers, the scavengers, the transpor tation system and the water supply. At Wuchang (Hupei) hundreds of water carriers form a human chain as they pas up and down the steep steps of the river's bank balancin buckets of water at the ends of their bamboo shoulder pole Across the river at Hankow, wharf coolies form another end less chain loading and unloading river steamers from the shor The Hankow Wharf Coolies' Union estimates their numbers a 17,000. Tientsin's commercial life moves on the backs of mor thousands of coolies. They carry the bags of wheat, bales o cotton, baskets of coal from junks and lighters lying in th river to warehouses and factories; and they carry flour an matches and finished cotton goods from the factories to th junks and lighters. Long trains of wheelbarrow coolies tre into Tsinan from the country districts in the small hours o each morning pushing their creaking loads of hemp or cotto through the thick dust of the streets. Other lines of wheel barrow coolies move coal and freight from the railway statio into the old walled city some distance away; others are th night soil coolies who compose the city's sewage system Coolies in Tsingtao strain at heavy carts, as many as six an eight men to a cart, pulling and pushing their burdens of ra materials and factory goods up the steep slopes of Tsingtao' hills. In Peiping, it has been estimated that the transpor coolies, water coolies and funeral coolies number 50,000.[1 Canton coolies, according to the census of 1928, numbere about 36,000.[19] Up in Shansi rickshaw coolies compete witl the motor truck in moving bales of cotton across country fron the producing districts to the modern spinning mill at Yü-tze

[17] *Chinese Economic Journal*, vol. VII, no. 5, November 1930, "Notes o China's Labor Population", by C. F. Ma. The estimate was originally pub lished in the *Kiangsu Political Year Book* for 1922.

[18] *China Labor Year Book* (in Chinese), 1928, p. 626.

[19] *Nankai Weekly Statistical Service*, vol. VIII, no. 30, August 4, 1930.

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In the same country, coal and iron move from the mines in wheelbarrow trains under coolie-power to the modern blast furnace at Yangchuang. A census of population taken in Shansi in 1923 reported over 771,000 coolies among the gainfully employed in the province.[20] Even the modern city of Shanghai depends on coolie-power. In the International Settlement, the Municipal Council permits the licensing of 10,000 public rickshaws and 40,000 pullers. The number of private rickshaws licensed in the Settlement in 1933 was nearly 12,600; the number of hand carts and wheelbarrows about 22,000. These four classes numbered over 70,000 in the International Settlement alone, not to mention the French concession, the native city, and the various other classes of coolies in the Settlement not licensed by the Council.[21] In the interior of China, each city has its share of coolies—wheelbarrow coolies, wharf coolies, cart coolies, carrier coolies, night soil coolies, funeral coolies, water carriers, rickshaw coolies. They number millions throughout China. Coolie labor is an enormous reservoir from which modern industry may draw man-power. A factory hand may have been a rickshaw boy or a wharf coolie. If the mill lets out hands, some of the workers will again become coolies. Though the wages of coolie labor may be as great or even greater than semi-skilled factory labor, on a daily basis, the work is often much harder. It is paid for by the piece or by the job, and it is irregular and uncertain.

Female Labor

Female labor does not form a large part of the three great classes of available labor that have been discussed. There may be women among the soldier-bandit population, but they are not a large element. Among the emigrants about one fifth of those going to Siam and to Singapore in the decade ending in 1930 were women. A larger percentage of the migrants to Indo-China, about 48 per cent in the same period, were women and children in almost equal numbers. In the migration to Manchuria, it was only in the last few years before the Japan-

[20] C. F. Ma, *loc. cit.*

[21] Shanghai Municipal Council, Report for 1933 and Budget for 1934.

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ese invasion that women and children had gone in any num bers. In 1928 and 1929, about 17 per cent of the migrant arriving at the ports of Manchuria were said to be female.[22] Coolie labor is also primarily male. Women may be see working under contractors as carriers, where the load is not to great, and occasionally women may join the men in the pullin of transport carts, but they are not rickshaw coolies, nor wheel barrow coolies, nor wharf coolies, nor are they found often i any of the other classes of coolie labor. It is the factory tha has discovered the possibilities of female labor and is drawin upon that rich source of cheap labor more and more as in dustrialization progresses.

Home Workers

In the past women have been accustomed to labor at indus tries in the homes. They did the spinning of cotton and woc and hemp, the reeling of silk, the weaving of cloth, the makin of shoes and clothing and other needlework, not only for th family, but for sale at a roadside market or a temple fai With the slow disintegration of the old self-sufficient economy these tasks have been curtailed. Machine-made goods hav replaced many of the hand-made products, and the women an children and old people no longer have the certainty of hom occupations. In some sections new by-occupations have bee introduced through contact with the West. The so-calle home workers have come into being. They work for a con tractor or a manufacturer on materials provided to them an are paid for their work by the piece. Contractors for export ing firms distribute hair to farm houses in Shantung for th making of hair nets. In most of the port cities the design and materials for embroidery and lace work are sent out t farm villages by contractors, merchants or exporters, and th work is done in the homes by the farm women and children a so much per piece. Contractors for match factories distribut the fabricated wood and paper of match boxes to thousands c farm homes in the surrounding districts, where the pastin

[22] Tsao Lien-en, *Chinese Migrations to the Three Eastern Provinces;* Chin Bureau of Industrial and Commercial Information, *Booklet Series no. 15.*

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together is done by women and children. Contractors and carpet manufacturers give out raw wool for hand spinning in the homes. Merchants employ home workers at hand knitting. Weaving and knitting establishments use home workers for winding cotton yarn on to spools and bobbins. Some of the operations in the making of firecrackers are done by home workers. The sewing of bristles in tooth brushes is home work. There is no possible way of estimating the numbers of these home workers. They certainly run into hundreds of thousands. It is very cheap labor, and it is used because it is cheap.

In the case of hair nets, the contractor receives from the exporting firm $1.20 to $1.50 (Chinese currency) [23] per gross of finished hair nets, that is, in the neighborhood of one cent per hair net. Out of this amount he must make a profit and pay the home worker for her labor. It is tedious work, and one worker can do only six to ten or twelve nets a day. She is paid in coppers, not silver, and her earnings amount to from 5 to less than 10 cents a day (Chinese currency). For making match boxes, the home workers receive from 70 cents to $1.30 per 10,000 boxes,[24] or between 1 and 2 cents per 100 boxes. It is said that a worker can do from 700 to 1500 and possibly as many as 2000 boxes per day. A woman and a child will generally do about 2000 between them. The earnings per day range from less than 5 cents to 12 or 15 cents. Very fast and skillful workers can make as much as 20 cents a day. At best, it is no more than enough to pay the cost of the worker's food, but it adds to the family income, and the work is done when the woman or child has no other tasks to do. At harvest time or planting time, the home work is dropped, if the workers are needed in the fields. At those seasons the piece rate is raised by the factory or the contractor in order to insure an uninterrupted supply.

[23] All references to money throughout this article will be in terms of Chinese currency unless specifically stated otherwise.

[24] In Macau the rate was as high as $2.50 Cantonese currency, per 10,000 boxes, which converted to Shanghai dollars at that time was about $1.94. It was the highest rate quoted to the author and not representative of the usual practice. The author's sample covered twelve factories employing 6,104 workers.

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Piece Workers

Although the home work is poorly paid it has the virtue o permitting the women to remain at home where they can atten to the affairs of the household and at the same time earn a smal wage. Women with bound feet, and there are still many o them in China, may perform the home work tasks withou difficulty; but bound feet are a handicap for factory work especially where the worker must stand at a machine for te or twelve hours a day. Factory managers prefer not to hir "lily feet", even if the woman can bear the strain. But smal feet will not long keep Chinese women out of the factory. Th new generations, especially in or near large cities, no longe bind their feet. And women with bound feet even now g into workshops where they may sit on the floor and sort cocoons pick over peanuts, spin wool by hand, wind yarn, prepare reed for matting, sew soldiers' uniforms or fill the match boxes tha have been made in the homes. The custom that has kept th woman at tasks that she can do in the home is easily broke under the strain of economic necessity. So great a propor tion of the population lives on a bare subsistence level that ther is small question of the willingness of the female element t work away from home. Women began by taking work fron contractors or directly from the factory to do in the home The next step was to go into the workshop, godown or factor as casual piece workers. This work was more regular an the pay higher. There are hundreds of thousands of wome and children piece workers to whom the employer owes n guarantee of employment. They come and work until the have completed the work on hand. There may be a full day' work or only a half-day's work. They are paid by the piec and receive no food or lodging as do the permanent worker in most of the workshops. The work is unskilled and an aver age woman will earn 20 to 30 cents a day at most of the jobs The child worker earns a little less usually.

Female Factory Workers

With the development of spinning and weaving mills, sill filatures, rubber factories, cigarette factories and other large scale factory industries, women and children have becom

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egular factory workers and make up the bulk of the perma-ent force. A study of industrial workers in 28 cities located or the most part in Southern and Central China was made by ie Ministry of Industries in 1930.[25] The survey covered only stablishments employing more than thirty workers and in-luded 965,000 workers. Of that total 47 per cent were omen, 7 per cent child workers, and the rest male labor. This istribution is probably not representative of all Chinese in-ustry, because it is precisely in the large-scale establishments nploying more than thirty workers that female labor is most enerally employed, and also because female labor is much iore extensively used in the factories of Central China than i those of North China. In Tientsin, female workers mounted to only 6.3 per cent of the total covered in a survey y the Bureau of Social Affairs of that city, in 1934;[26] in hanghai the percentage of adult females in a similar study or the same year was 41 per cent.[27] Cotton mills in the North ave not yet begun to use female labor very extensively, ex-ept at Tsinan; in Tsingtao and Tientsin, mills visited by the uthor employed less than 11 per cent female labor, but in hanghai and Wusih, female labor in the cotton mills visited mounted to 78 per cent.

Any sample distribution of industrial workers must be re-arded critically, because of the concentration of female labor i a few industries, especially in the textiles where the units :e very large. If the textiles weigh too heavily in the sample, ie percentage of female labor will be too high. The 1930 irvey made by the Ministry of Industries estimated that 71 er cent of the total factory workers in Shanghai were women id girls. The Shanghai Bureau of Social Affairs in 1929 stimated the number of female workers in Shanghai factories : 61 per cent [28] of the total, and in 1934 at 41 per cent.[29] In

[25] *Nankai Weekly Statistical Service*, vol. IV, no. 9, March 2, 1931.

[26] *Chinese Economic Bulletin*, vol. XXV, no. 13, September 29, 1934.

[27] Survey by Shanghai Bureau of Social Affairs, published in the *Chinese conomic Bulletin*, vol. XXV, no. 9, September 1, 1934.

[28] Shanghai, Bureau of Social Affairs, *Wages and Hours of Labor, Greater hanghai, 1929*.

[29] *Chinese Economic Bulletin*, vol. XXV, no. 9, September 1, 1934.

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the last two surveys the percentage of textiles in the total was 73 and 49 respectively.

It is better to take each industry separately for a proper estimate of the extent of female labor employed. In the Ministry of Industries' study, female labor dominated the textiles tobacco factories, and some food industries. In cotton spinning the percentage was 70, in silk filatures 85, in knitting 82 in embroidery 81, and in cotton weaving 51. Female workers in tobacco factories represented 75 per cent of the total and in match factories 43 per cent. In the author's own sample of twelve match factories scattered from Mukden to Canton, the ratio of women and children ranged from one third to seven eighths of the total. In flour mills, building trades, machine shops, shipbuilding, electric works, water works, printing and binding, female workers were practically nonexistent. In the 1934 Shanghai study the distribution by sex was very similar. Female workers were important in textiles, foods, wearing apparel and rubber establishments; male workers dominated in foundries, machine shops, lumber, electrical supplies, hardware vehicles, brick, tile, cement and glass industries. In the semi-skilled light manufacturing industries it is the female workers who predominate; in the heavy and skilled trades, it is the males. From the survey made by the Ministry of Industries it seems certain that the total number of female workers in factories in China must be considerably over 500,000, and probably nearer a million.

The entrance of women and girls into factory and workshop employment is producing a vital change in the status of women in China. The daughter is no longer a dead-weight on the economic side of family life. Girl babies are not now unwanted by working-class families. While a son will often leave home for some distant place and there establish an independent existence, or will enter the army, or join a contractor's gang, or stay at home and take a wife, a daughter will go into a factory and bring her earnings home to help support the family. After the first few months, her earnings are as great and sometimes greater than the cost of her own keep. The family is at the same time relieved of expense and aided by

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dditional income, however small. If the daughter goes with recruiting agent to live in a distant city, there may be a ayment of thirty or forty dollars by the agent to satisfy the mily, and the girl is self-supporting from that time on. Fac- ry girls who live at home have learned that their wages mmand respect. When there is meat for dinner, it is cooked pecially for the earning daughter. She has become a person f consideration in the family circle.

Child Labor

Besides the adult male and female working population, there a large body of child labor that is used by Chinese industry. ree or public educational facilities are generally lacking and ildren come to industry much earlier than they would if ere were schools to absorb them. Children as young as five six years are employed as home workers and as piece workers factories and workshops, and it is not uncommon for boys eight or ten years to be apprenticed to a master craftsman, for girls and boys of that age to be regularly employed in xtile mills as factory hands.

Child labor is most numerous in the industries in which male labor predominates, in the textiles, match factories, iloring and embroidery establishments, but it is relatively uch more important in some of the predominantly male occu- tions where the manufacturing units are small and appren- ce labor is trained for skill. According to the Ministry of dustries, 8 per cent of the workers in the textiles in 1930 ere children. The percentage is not large compared with her industries and the handicrafts, but the total numbers e so much greater in the textile mills. The Ministry of In- stries' survey covered about 63,000 child workers of whom ,000 or 71 per cent were in the textiles and less than one ousand were in machine shops. The 1934 Shanghai study vered 26,995 apprentices and 5,366 child workers of whom ,883 (49 per cent) were in the textiles, representing about per cent of the textile workers, and 5,630 (17 per cent) ere in machine shops and foundries, representing 37 per cent the total workers in those establishments. The survey by

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the Tientsin Bureau of Social Affairs in 1934 covered a tota of 36,705 workers of whom 23 per cent were child workers, 5 per cent of them in textiles, 24 per cent of them in metal war establishments and 9 per cent in chemicals (including matcl factories).[80]

There are two distinct classes of child labor: girls and boy who live at home and go, either with their mothers or alone to work at simple unskilled tasks as piece workers or as regula factory hands, and boys who are apprenticed in the crafts an trades to learn skill and who live at the workshop or factor as permanent employees.

Child labor begins in the home. When the mother is home worker, the child learns to help just as soon as he or sh is old enough to master the simplest operations. A very smal child can be taught to paste match boxes, or to wind yarn o to do some of the simpler processes in making hair nets. Thei tiny fingers can handle the fine strands of hair better than a adult. They do this work as naturally as they would help th mother with household duties or the father with farm work When the mother goes into a workshop or factory, there i often nothing to do but take the children along. Sometime the entire family will go, the mother, the father and the chil dren. It is not extraordinary to see a workman leave his loor and pick up a baby from a pile of bagging on the floor t quiet its crying. If the woman goes to the workshop as a piec worker, it is not long before the children are able to help he and so increase her earnings. By six or seven years of ag the child can be an appreciable help on piece work. He ca run about collecting bobbins, or sort cocoons, or fill matc boxes. By eight or nine years of age, the earnings of th child can approach the mother's on simple unskilled tasks. A great many children are employed in this way in match fac tories and cotton mills. The management of the plant does nc regard them as workers. If the mothers bring their childre the factory officials do not put obstacles in the way, but the

[80] Of the textile workers 17 per cent were child workers and of the met workers, 59 per cent were children, but there were more than twice as mai children in the textiles as in metal ware. *Chinese Economic Bulletin*, v XXV, no. 13, September 29, 1934.

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lo not hire the children directly. Statistics of child labor are, herefore, apt to be understatements. There are children, ıowever, who are directly employed at very early ages in both vorkshops and factories. There are some hand-reeling rooms n modern cotton mills that have more the appearance of over-:rowded elementary school rooms than of factories. As many ıs 80 per cent of the workers in these rooms may be children ınd by no means all of them have come simply to be with their nothers. In the spinning rooms there are children ten and welve years of age and probably younger, who help with doff-ng and spinning. They run in and out past fast-moving, un-guarded machinery and the accident hazard is great. Perhaps he greatest abuse of child labor is in the match factories. The fire hazard is tremendous. In the course of a brief tour of a plant, a visitor may see four or five fires start at the crowded packing tables. Little girls of six or seven must cope with a udden flare-up of a full match box in a pile of highly inflam-nable material. They beat out the flames with bare hands and :ontinue filling boxes at something like 33 coppers for 1000 boxes, which is about 8 cents in silver. Many Chinese mills till make the white phosphorous match with its hidden threat of phosphorous poisoning, and these matches are handled by hildren.

Under the factory law,[31] when and if it is enforced, children ınder fourteen years will be eliminated from factories using power and all industrial establishments employing thirty or nore workers. But this section of the act is very difficult to nforce. There are no birth records to establish the child's ge, and the parents are unwilling to coöperate in the enforce-nent of the law. Besides their small earnings, the children, in he wintertime at least, may be better off in the warm factory han they would be at home or in the streets. It is probable, ıowever, that it will not be necessary to wait for the law to liminate the very young children now in industry. The pro-esses of industrialization may be depended upon to do that. Machinery is being introduced that performs the operations

[31] Promulgated by the National Government, December 30, 1929. Ordered o be enforced on and after August 1, 1931. Order not put into effect.

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now done by child labor more efficiently and more cheaply The operation of costly machinery that may be injured by neglect is generally found to be more profitable with adult workers. It is already apparent in some of the most modern and efficient factories in Shanghai that child labor is being eliminated. Another force that will work against child labor because of the competition it offers to adult labor, is the growing labor movement. These two forces are already working toward the curtailment of very young child labor in factories and they will probably bear fruit. The question of apprenticeship in the crafts is much more deeply rooted.

Apprentice Labor

Apprentice labor contributes both to the abundance and to the cheapness of China's man-power. From time immemorial young boys have been apprenticed, at eight or ten or twelve years of age, in the handicrafts and commercial shops. In the general absence of educational facilities for poor boys, the apprenticeship system has had the double virtue of relieving the family of the support of the youngster and of providing the boy with vocational training, generally without cost, though in some of the art industries the parents must pay the master a sizeable fee. Extremely young children are rarely apprenticed because a master does not care to take on a boy until he has reached an age when he can be of enough value in the workshop to pay for his keep. The employer of child labor on piece work does not have this concern. He does not feed or lodge the child worker in his home. He pays only for the work that is done. If the child plays away half the day, the employer is at no loss, but if the apprentice plays on the job the employer is out the cost of his keep. Although the apprentice is not paid a money wage, his keep costs the master probably more than is generally paid to child piece workers in a day. In the metal trades the boy must be twelve years of age or more to be apprenticed; in the textiles, there are simple tasks to be performed and he may be eight or ten years of age It depends on the master and the boy and the availability of boys for apprenticeship, that is, the extent of famine in the country districts.

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The supply of apprentices is generally drawn from farming villages. There may be several reasons for this fact. The master himself has probably come from the country and naturally turns to his native village when he wants to take an apprentice. A more significant reason may be that agriculture has long been the source of cheap labor, and in times of famine or crop failure there is always an abundance of apprentice material.

The relation between master and apprentice is a personal one. The apprentice enters the master's home, becomes a member of his household, eats at his table, sleeps under his roof, is provided with hair cuts and baths, a small amount of money at festival times, and sometimes his clothing. He comes for a term of apprenticeship that is generally three or four years, but in special industries it may be five or seven years. He is trained by the master, and when his term is up he becomes a journeyman eligible to join the guild and become a master craftsman. Most guilds have rules that fix the period of apprenticeship, the terms under which the apprentice becomes a journeyman, and sometimes the number of apprentices that a master may have at any one time. There are guild customs, if not actual rules, on the money bonus paid to an apprentice for the term of his contract, or for each year of the term. These guild regulations and customs are the only bill of rights of apprentice labor. The apprentice must submit to the rule of the master, who replaces his father in this respect, while he is under the master's roof. He must be sponsored by one or more guarantors who are held responsible for the cost of his board if he breaks his contract. He is expected not only to work at the craft in which he is receiving training, but also to do any other tasks the master may require of him and to help the master's wife with household duties. In many cases the term of apprenticeship is much longer than is necessary for the boy to learn the simpler trades. A smart boy will do a journeyman's work long before his term of training is up. The result is that the master gets the benefit of a journeyman's work for the subsistence wage of the apprentice. In some of the art guilds the term of apprenticeship includes one year

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after the training has been completed, when the apprentic does a journeyman's work without any money wage. It is th subsistence wage that makes the apprentice system attractive t the masters.

The well-being of the apprentice depends very much upo the particular master. Some masters are exacting and wor long hours, even into the night. Others are more lenien Some will insist upon payment of board money for a broke contract; many do not enforce this rule upon the guarantor c parents. Some masters are mediocre craftsmen themselve and their training is poor. Some give real training and pa the boy a wage as soon as he can do a journeyman's worl Some keep their apprentices at minor tasks at which they cann learn the craft, require them to do menial household task provide meager fare for board and may or may not give a annual money bonus. In many cases apprenticeship mea little more than temporary slavery.

Apprenticeship in the handicrafts has never been a bed c roses, but it has served the function of training skilled craft men, and under the old order had certain safeguards that, i the ordinary course of events, led either to some assurance c employment as journeymen or to independence of operatio By limitations of membership and monopoly price contr schemes, the old guild system maintained an economic balan that was its justification. The advent of cheap machine-mac goods from the West destroyed this balance. The guild lo its control of industry; industrial organization changed; ar the transition workshop, half-way between factory and domest workshop, came into being. The handicraft workshop has tl economic status of a family enterprise in which the rights c the individual are merged in the family. The transitic workshop has become more impersonal; the units are large some machinery has been introduced, and the emphasis is c mass production.

Apprenticeship in transition workshops is now primarily scheme for securing cheap labor. What limitations there we on the numbers of apprentices per master are disregarde The master of a transition workshop employs as many appre

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ces as he can use, without much consideration for their train-
ıg or for their absorption in the industry after the apprentice-
ıip has been served. It has been charged that the rug in-
ustry in the post-war boom exploited apprentice labor in that
ay. It was said that the industry would employ only ap-
rentice labor; that when the apprenticeship was ended,
ıe boys were discarded and new ones were taken on in their
ead; and that those who had learned the trade could find no
pportunity to use their skill as journeymen. A study [32] of
ıg factories in Peking in 1924 revealed that of the 6,834
orkers covered 74 per cent were apprenticed labor. In 1929,
[. D. Fong's study [33] of the carpet industry in Tientsin dis-
osed that only 28 per cent of the 11,568 workers covered were
pprentices. The wide difference in the findings of the two
udies may be due in part to a difference in the character of
ıe industry in the two cities, but it is more probably due to
ıe five years' difference in time, in which period the supply of
illed workers was enabled to catch up with the demand, and
ıe industry had passed from rapid expansion to a more stable
eriod of development. The sample for the rug industry in
ıe 1930 survey of the Ministry of Industries was very small
ıd for that reason, the estimate of 16 per cent for apprenticed
ıbor may not be representative. The author's own study of
ıg making establishments in Tsinan, Tientsin and Peiping
Peking) in 1931 covered 5,170 workers, of whom only 280
r 5 per cent were said to be apprenticed. It is probable that
ıe latter figure is too low for the industry as a whole, because
ıost of the establishments visited were relatively large-scale
nits, and a goodly proportion were either foreign-owned or
ıther closely connected with a foreign exporter. The foreign-
s professed a disinclination to use apprentice labor and a
reference for trained adult labor, when they could get it, both
ecause it was more efficient and because they disliked the
ublicity and criticism that had been focused on the apprentice

[32] C. C. Chu and T. C. Blaisdell, "Peking Rugs and Peking Boys", Special
ıpplement of the *Chinese Social and Political Science Review*, April 1924.

[33] H. D. Fong, *Tientsin Carpet Industry*, Nankai University, Committee on
ıcial and Economic Research, Industry Series, Bulletin no. 1.

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system during the rapid expansion of the industry. As the industry contracted after its post-war boom, trained labor became more available and it is now less necessary to use a large number of apprentices than it was in 1924 and earlier. It is probable that the natural development of the industry has corrected the abuse, if it did exist as was charged. Those establishments under foreign influence which acknowledged the use of apprentice labor claimed they exercised a liberal interpretation of the terms of apprenticeship. The boys, they said were not held strictly to the full period of training. If they could master the trade in six months, they were paid thereafter at the full journeyman's rate.

The transition workshop has developed in greater number in the textile industries than in other trades, and it is in these shops that apprenticeship is relatively more important. Of 1,600 workers in twenty cotton weaving establishments visited in 1931-1932, 41 per cent were apprenticed. In forty-one transition and handicraft shops in other industries, 25 per cent of 8,076 workers were apprenticed. There is a growing reluctance among the younger generations to be apprenticed in the old crafts because of the fact that these trades are dying out, and a boy who has completed his apprenticeship may find that there is no place for him in the industry as a journeyman or master. His training in a handicraft is of very little value in a modern factory, where he will find it necessary to go through another period of training before he can make the usual wage. Some Chinese employers of the old type claim that apprentices are now harder to get because of the practice in factories and some workshops of putting the same class of labor, that is, child labor, on a wage basis immediately or after a very short period of training. This practice and the experience of the rug industry seem to point to a drift away from the use of apprentice labor and toward the factory system.

Girls have never been apprenticed except in very special crafts [34] where they were supposed to have particular aptitude. A girl in a poor family was occupied at home. In famin

[34] Ta Chen, *Chinese Migrations, with Special Reference to Labor Conditions*; U. S. Bureau of Labor Statistics, *Misc. Series no. 340*, p. 32.

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imes when her brother was apprenticed in a craft, she faced lavery in a wealthy family, as a domestic servant. Boys are lso sold in slavery, but the practice is more common with irls. The Nanking Government in 1932 announced the adoption of regulations for the abolition of child slavery [85] and he punishment of owners who refused to set free their slaves, ut the practice of slavery continues. There is no definite age t which a child is sold. She may be still a baby, or she may e old enough to be of immediate use to her owner. The sale epends on the desperate circumstances of the child's own family. When a girl is sold, she becomes the property of the wner, and her future lies entirely in his hands. If, when she s grown, she marries, it is the owner who arranges her marriage or sells her in concubinage, and inevitably some slave irls are also sold in prostitution by their owners. As a domestic slave, she is fed and housed and clothed by the owner ut is paid no money. It is again subsistence labor.

Thus through slavery, apprenticeship, factory labor, home vork and piece work, the children of the working class population in China are contributing to their own support from as arly as six and eight years of age, many of them entirely self-upporting. This body of child labor is not inconsiderable, and t cannot be ignored in considerations of both the abundance nd the cheapness of Chinese labor.*

DOROTHY JOHNSON ORCHARD

NEW YORK CITY

[85] *North China Herald*, Shanghai, September 28, 1932.

* To be concluded in the next number of this review.—ED.

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THE SHAPING OF REVOLUTIONARY NEW ENGLAND, 1680-1740

A STUDY of the changing attitude of the New England ers toward old England in the generation before th Revolution throws some light on the divergent opinion which brought the colonies into civil war. The puritans had with good reason, regarded the restoration government witl fear and hostility. It had little in common with the City upo a Hill. Cotton Mather thought Charles II a greater monste than Percy Kirke, of whom he had nearly the lowest possibl opinion.[1] Samuel Willard regarded the royal opinion agains the Massachusetts charter as "forraign mischief",[2] and the Rev Samuel Stow of Middletown called the Andros officials "For reigne imposed ones".[3] The royal governor's followers were "a crew that began to teach New-England to Drab, Drink Blaspheme, Curse and Damn."[4] Cotton Mather, opposing changes which would permit the royal government to appoin the governors of Massachusetts, denounced them as "the fata Enemies of this people, that shall go to Debauch and infect the Rising Generation among us, and corrupt them with evi mauners."[5]

The one hope that the puritan colonies would not be morally debauched, politically enslaved, and oppressed in religion rested with a Whig victory in England; so naturally the struggle to retain the old charter of Massachusetts was regarded as one with the English struggle to regain the lost liberties. The English Whigs were quite as aware of this as were the New England puritans. Edward Randolph complained that

[1] Cotton Mather, *Diary*, (Mass. Hist. Soc., *Colls.*, ser. 7, vols. VII–VIII) I, p. 113.

[2] *The Child's Portion* (Boston, 1684), p. 195.

[3] Mass. Hist. Soc., *Colls.*, ser. 6, vol. V, p. 28.

[4] *Andros Tracts* (Prince Society, 1868-74), II, p. 50.

[5] *The Serviceable Man* (Boston, 1690), p. 31.

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ıe resistance which he encountered was encouraged by the ɔposition at home: " Endeavors are still used by the Phan- atticks at home to keep up the minds of this faction, by send- ıg over heither all sorts of scandalous papers, as the first :cond & third parts of No protestant Plot & severall papers ı vindication of my lord Shaftsbury. . . ." He added that ıe puritan juries seized upon the acquittal of Shaftsbury as a leading President" and accordingly turned loose all those hom he brought before them.[6] There is no better illustration f the broad political background of the rebellion against .ndros than the fact that the man who led the rebels against ıe governor and his forces in the Castle was an immigrant ıglish churchman who never showed sympathy with the theocracy" or its ways. The mixed fears which inspired the :bellion were indicated in Cotton Mather's denunciation of

> those, who t'other Day, let fall their cursed and cruel Intima- tions, That it was convenient this Territory should be possessed by another people! and those that were so politick as to inform us now and then, That it was not for the Interest of our Supe- riours that we should Thrive! and those that have had the vanity to publish unto the World in Print, their Proposals, That the Religion of this people made it unsafe to allow them here.[7]

The Revolution of 1689 transformed the puritan colonies ·om unwilling, sullen, fearful subjects to ardent supporters of ıe British king and constitution. Gurdon Saltonstall, later overnor of Connecticut, told the general assembly of that col- ny that God had raised up King William " to be the Bulwark f Religion and Property, to the English Israel. We are a ttle Branch of that Vine; our Civil Life and Liberty is bound p in theirs."[8] With a Protestant king upon the throne and Vhig principles in the ascendant in the home government, otton Mather forgot his old fears of the dire effects of royal overnors. Speaking before one such he told the general ɔurt: " It is no Little Blessing of God, that we are a part of

[6] *Randolph Papers* (Prince Society, 1898-1909), III, pp. 160, 187, 215, 217.

[7] *The Serviceable Man*, p. 30.

[8] *A Sermon Preached before the General Assembly* (Boston, 1697), p. 57.

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the English Nation. Our Dependence on, and Relation to that brave Nation, that man deserves not the Name of a English man, who despises it." He pointed out that Englis and colonial liberties were inseparable, and in a paroxysm o patriotism, shouted: "As the English Nation is the mos Glorious of any under Heaven, so there is no Nation, that ca boast of such a King, as ours!" [9] The popular picture of th colonial clergy opposing the new order because it decrease their powers has no basis in fact; for fifty years after the Revo lution of 1689 they preached loyalty to the new charter an the royal government, for on them depended the religious an civil liberties which they enjoyed. And the other classes like wise reversed their attitude toward England as the result o the Glorious Revolution. For fifty years King William wa the patron saint of New England. Long after his death hi birthday was celebrated "with all possible Demonstrations o Joy." [10] English Whigs contributed money for a statue to b erected to his memory in Boston as late as 1735.[11] In 174 the new province galley was named "Prince of Orange" fo "our glorious Deliverer",[12] and the province had portraits o William and Mary painted and hung in the council chamber.[13]

Anne was welcomed as a ruler of the same sort and at firs was accorded the title of "the Best of Queens". In sermon before the general court it was pointed out that a general wa was impending, a war in which her interests and New Eng land's would be the same.[14] Her efforts to stem the tide o immorality and irreligion at home added to her popularit here. But in time military mismanagement, threats of he officials against the civil and economic liberties of the colonie and distrust of her later ministers altered the attitude of th New Englanders. Whigs like Sir Henry Ashurst, the provinc

[9] *A Pillar of Gratitude* (Boston, 1700), pp. 32-4.

[10] *Boston Gazette*, Nov. 11, 1728.

[11] *Boston News-Letter*, Mar. 13, 1735.

[12] *New-England Weekly Journal*, Sept. 2, 1740.

[13] *News-Letter*, Dec. 11, 1740.

[14] Increase Mather, *The Excellency of a Publick Spirit* (Boston, 1702), 26; Jonathan Russell, *A Plea for the Righteousness of God* (Boston, 1704) p. 17.

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gent in London, contributed propaganda: "alone I have saved ou from being worse slaves than they in Turkey, and many mes broken the chains laid for you." [15] The puritans recalled ividly the tyranny which James of York had exercised over cotland and remembered with horror the subjection of the estern counties of England in 1685. In apprehension they atched "the acts that stain

> The last black months of Anna's gloomy reign;
> When secret treason work'd when justice fled,
> And loud destruction threatned o're our head." [16]

s early as 1710, in preaching before the general court on the irtues of Anna and the peculiar civil liberties of Massachu-etts, the Rev. Ebenezer Pemberton had felt obliged to urge iat only men loyal to the Queen be elected councillors.[17] In 715 the upper chamber, the provincial center of loyalty to Villiam and to the Hanoverians, having referred to "King Villiam and Queen Mary of Blessed Memory" flatly refused nne a like compliment.[18] The clergy, sensitive to threats gainst religious liberty, were driven to action by the Sach-verell sermon.[19]

In 1715 New England was on the point of returning to the ndependent and provincial spirit of the seventeenth century. he coming of the Hanoverians changed the complexion of ffairs. It was hailed as a revolution comparable with that of 689, and the parson who compared the puritan exodus with iat of the Jews, thought best to add the hasty qualification iat England was not to be compared with Egypt, or her ings to the pharaohs.[20] By 1718 George I was accorded the tle of "the best of Kings", "the Light of the Morning and . . the breath of our Nostrils".[21] The Massachusetts elec-

[15] Mass. Hist. Soc., *Colls.*, ser. 6, vol. V, p. 217.

[16] Mather Byles in the *Journal*, Sept. 4, 1727.

[17] *The Divine Original* (Boston, 1710), p. 89.

[18] Samuel Sewall, *Diary* (Mass. Hist. Soc., *Colls.*, ser. 5, vols. V–VII), I, p. 38.

[19] *New-England Courant*, Feb. 19, 1722.

[20] Jeremiah Shepard, *God's Conduct of His Church* (Boston, 1715), p. 23.

[21] Benjamin Colman, *Religious Regards* (Boston, 1718), p. 46.

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tion sermon of that year contained what was perhaps the mos fulsome expression of loyalty to Great Britain that the puritai colonies had ever heard.

At this date the most important factor behind the loyalty o New England to old England was religion. The persecutio of the English puritans under Charles and James had drive the puritan colonies into a state of complete psychological iso lation. Now they were proud to be the subjects of th champion of Protestantism and (relative) religious liberty The colonial press was full of the stories of the black deeds o Catholic kings, and its readers turned sickened from its narra tion of the horrors of the Inquisition, which still smoldered i parts of Europe. As Whig bishops filled the sees of England and as puritan New Englanders, becoming wealthy, began t look back with distaste on the Levellers of the preceding cen tury, the religious tradition of the two Englands became mor alike. The trend is indicated by the growing custom of cele brating Guy Fawkes Day with "Bonfires and other Rejoyc ing." [22]

Somewhat later the factor of widening economic and politica horizons began to weigh heavily against the old provincialism In 1703 the radical party in Connecticut had urged that th colony agent in London be discharged that they might "li quiet & unobserved" in the obscurity of the American woods.[2] The next year Blenheim was celebrated in a perfunctory manne because the Board of Trade ordered it. But the growth o economic ties with Europe was noticeable everywhere. A European crop failure would draw off colonial wheat unti embargoes were necessary to prevent starvation here. Th *Boston Gazette* was founded to satisfy the demand of the risin merchant class for economic information. By 1740 the trader were sufficiently conscious of the importance of foreign develop ments to watch the health of the French woolen industry "whereby the Trade of our Nation, as to that important Ar ticle, is like to suffer greatly." [24] Although there was littl

[22] *Journal*, Nov. 11, 1735.

[23] Mass. Hist. Soc., *Colls.*, ser. 6, vol. III, p. 134.

[24] *News-Letter*, Feb. 28, 1740.

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rade with North Britain, Glasgow made John Frizel, a Boston nerchant, a burgess and guild brother.[25]

A few individuals, such as Cotton Mather and Samuel Sewall, had in the seventeenth century kept a keen and critical ye on the progress of European political affairs, but the mass of the people were little concerned. When the *News-Letter* began in 1704 it published such solid news as royal addresses and the lists of M. P.'s, but these gave way for a time to more ensational items, such as the interesting doings of Moorish yrants, or the wars of the Turks and Persians. The somewhat provincial *Courant* protested this sort of journalism as devoted o "who has the Tooth-Ach at Rome and Constantinople, or vho dyes of the Wherry-go-nimbles at New Guinea and the Land of Papous"; [26] but eventually it too bowed to the public lemand and gave more space to foreign affairs. In the *Boston Gazette* of July 25, 1727, the only word of American news was he arrival of a ship, although there was nothing noteworthy in he foreign dispatches to press the paper for space. More and nore interest in the affairs of the home government is shown by he printing of such items as a minute account of imperial fi- nances.[27] The pamphlet press shows the same tendency, such tems as "A Poem. Being an Essay on the Characters of the nost Illustrious Persons in Camp or Cabinet since the Glorious Revolution", "A Modest Apology for Parson Alberoni", and 'An Enquiry into the Reasons of the Conduct of Great Britain" being widely advertised. The fast and thanksgiving proclamations of even the elective governors of Connecticut reflected the new concern in world affairs and must have greatly ntensified public interest in them.

The rapid growth of the French menace created new ties with England. By 1720 the New Englanders were watching Law's Louisiana scheme,[28] and their press was printing the addresses n which Governor Burnett warned the New York assembly of he French menace on the Mississippi.[29] The speeches of cer-

[25] *Ibid.*, Apr. 18, 1723.

[26] *Courant*, June 17, 1723.

[27] *Boston Gazette*, Sept. 9, 16, 1728.

[28] *News-Letter*, May 19, 1720.

[29] *Boston Gazette*, Oct. 31, 1720.

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tain Mississippi chiefs at the French court were reported,[30] and by 1732 the Massachusetts house of representatives was taking a lively interest in Crown Point.[31] As the advance of the French drew more and more attention, the colonists began to consider the conquest and annexation of Canada—of course by royal arms.[32]

As the result of past fears and experiences, the new attachment to the royal government was purely partisan. Speaking before the general court Benjamin Colman denounced Tories and Jacobites as "a restless party in our own Nation, (a parcel of proud, feirce, false, perjur'd traitors; ungrateful, unnatural hau'ty, heady, boasting, sensual men) who in the most perfidious & shameless manner have attempted, by secrit Conspiracies and by open rebellions, to sacrifice the Civil and Religious Interests of the Nation to their own private Interests." His picture of the Whig leaders was quite as distorted: "I have never been able to believe those great Servants of the Public any more capable of injustice and bribery, than if I had heard want of courage and council imputed to 'em."[33] The most rabid editorials in the Whig press of England can be matched with sermons of the puritan parsons.

Seventeenth-century New England had agreed on no political philosophy, so that of the English Whigs made an easy conquest. Even Rhode Islanders became lyric when they contemplated "the Liberties left in the English Nation, where almost the whole World beside those fortunate Islands is enslaved."[34] A typical Massachusetts election sermon maintained:

> That Form of Civil Government is best for us, which we are under; I mean the British Constitution. And this I can say not only because we are a dependant Government, but because were I at full Liberty, I should choose to be . . . of the Num-

[30] *News-Letter*, Aug. 4, 11, 1726.

[31] *Ibid.*, Jan. 6, 1732; *Journal of the House of Representatives of Massachusetts* (Mass. Hist. Soc., 1919–), *passim*.

[32] *Boston Post-Boy*, Apr. 19, 1736.

[33] *Religious Regards*, pp. 28-9, 44.

[34] *Rhode Island Gazette*, Jan. 11, 1733.

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> ber of the happy Subjects of Great Britain, whom God hath blessed above all People upon the Face of the Earth, in the Felicity of their Constitution: and I . . . know not of a single true New England Man, in the whole Province, but what readily subscribes to these Sentiments.[35]

ot only did these later puritans see and appreciate their Privilege as ENGLISH-MEN", which was "to live under e happiest Constitution in the World", but they recognized e fact that under it they enjoyed special privileges.[36]

On the other hand there was no clear conception of the place the colonies in the empire. As early as 1690 Cotton Mather id urged duty toward "the English Empire",[37] but the term British Empire" does not become common until the thirties, id the idea that the colonies owed the mother country anying in return for protection was still rarer. The unformed ate of public opinion is reflected in the confusion of nomenature. The colonists spoke of England as "home", yet stinguished between the colonies and "the Nations we derive om."[38] Again they contrast the interests of "our own ation" (England) with those of the colonies.[39] The old ock called themselves "English" when casting aspersions at e Scotch-Irish, but called officers with royal commissions British" to distinguish them from colonials.[40]

In the public celebrations one may trace the growth of comon interests between the old and the new English. The accession of George II was much more enthusiastically celebrated an that of his father. Even Connecticut indulged in parades, nfire, cheers and general illumination, Yale College being lorned with a great "GR".[41] Minor events, such as the

[35] John Barnard, *The Throne Established by Righteousness* (Boston, 1734), 13.

[36] William Cooper, *The Honours of Christ Demanded of the Magistrate* oston, 1740), p. 12.

[37] *The Serviceable Man*, p. 61.

[38] Peter Thacher, *Wise and Good Civil Rulers* (Boston, 1726), pp. 24-5.

[39] *Boston Gazette*, June 18, 1739.

[40] *Boston Evening-Post*, July 14, 1740.

[41] *Boston Gazette*, Nov. 27, 1727.

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Queen's birthday, were celebrated by the gentry before 173 and Caroline's death brought sincere grief.[42] Through tl example of naval officers and other royal officials the custo of public celebrations spread to the mob, who in the thirti voluntarily huzzaed on such minor anniversaries as that of tl king's accession.[43] On the occasion of the wedding of tl Prince of Orange to the Princess Royal in 1734 the bells Boston rang all day long, and Lieutenant-Governor Phipp puritan-born, climaxed the celebration with a ball.[44] Tv years later, to celebrate the wedding of Prince Frederic Boston and the larger provincial towns put on the greate display of fireworks and illuminations (alcoholic includec that the province had ever seen.[45] The doings of the roy family had become of such vital interest to the New Englande that they were struck with " inexpressible Grief and Concern at the difference between the King and the Prince of Wales

While these bonds were being woven, the sword which w to cut them was being forged. Some of the metal that we into it was old; Cotton Mather no less than John Adams su pected any man in the red coat of a royal officer to be infect with " Horrid Atheism and Wickedness ", and considered En land hopelessly corrupt. And while the established church of the two Englands were drawing closer in policy and in the logical thought, it was always easy to awaken here the horr suspicion of a plot to establish bishops, exact tithes, and allow the Congregational majority only the sufferance of ac of toleration.[47] It was pointed out that in any differen between the Church of England and the colonial churches, t king was bound to the former.[48] One of the popular piec of reading in the puritan colonies was the report of a roy committee for inquiring into the abuses and corruption of t

[42] John Webb, *The Government of Christ* (Boston, 1738), p. 38.

[43] *Journal*, June 16, 1735.

[44] *News-Letter*, May 23, 1734.

[45] *Boston Gazette*, June 21, 1736.

[46] *Evening-Post*, Apr. 10, 1738.

[47] *Courant*, Sept. 7, 1724.

[48] *Ibid.*, May 11, 1724.

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nglish ecclesiastical courts.[49] And the New England parson's ightmare of an Anglican appearing in his pulpit with a royal ppointment became a reality for the lawyers when the Arch-ishop of Canterbury's notaries public began to arrive and ssert their monopolistic privileges.

The political opposition to royal authority was a composite f many factors. In part it was a direct inheritance of the adical independent spirit of pre-Andros times, in Massachu-etts transmitted directly from the elder to the younger Elisha ooke. In 1699 Bellomont complained that the conservative olitical parties in Massachusetts and Rhode Island were still ostile to English control and hot in their assertions of liberty.)f course the colonial authorities denied the existence of any seditious republicanism", and they hunted down as a vilifier f the people and government the author of a pamphlet entitled, An Order of Our Soveraign Lord the People".[50] The oston town meeting was the chief stronghold of the unrecon-tructed party, and thence representatives were sent up to the eneral court instructed "to maintain all our Civel Rights and roperties against any Incrochments upon them."[51] The pur-ose was the nullification of the power of the royal governor nd the restoration of Boston to her old place as the center and ontrolling force of a practically independent state. The ctions of the Boston representatives gave Carteret and Burnett ood reason to report that there was a strong minority adhering o the old republican spirit, "dancing to the tune of '46."[52] n the twenties the Massachusetts house of representatives ained control of the provincial purse, and the New Hampshire adicals followed their example. In Connecticut the election reachers spoke of appointive governors as strangers and for-igners.[53] In the thirties there are an increasing number of bituaries which declare the deceased an ardent supporter of

[49] *A Brief View of Ecclesiastical Jurisdiction.*

[50] *News-Letter*, May 2, 1720.

[51] *Boston Town Records, 1700–1728* (Record Commissioners, VIII), p. 154.

[52] *News-Letter*, Sept. 19, Nov. 8, 1728.

[53] Timothy Edwards, *All the Living Must Surely Die* (New London, 1732), . 30.

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the liberties of his country, meaning New England. Parso John Hancock's sentiments were typical of an older grou which refused to raise their eyes to the new imperial horizons "If I forget thee, O New England, let my right hand forg her cunning; if I do not remember thee, let my tongue cleav to the roof of my mouth; if I prefer not the peace of New Eng land above my chief joy." [54] After Massachusetts had bee almost a half-century under royal governors, there were sti people in it who refused to observe the fast and thanksgivin proclamations because, coming from appointive governors, the were not valid.[55]

Although the "patriot" politicians on occasion quoted th Magna Carta and certain convenient Whig political axioms, they were reflecting the spirit of their ancestors rather than th new English political philosophy. They rarely quoted Lock although the parsons, who were usually on the side of th charter and the council, became increasingly fond of hin There was nothing in the teaching of English Whigs to justif the "patriot" axiom that they should always act as if they ha "a bad King, and a bad Governour." [57] Naturally New Eng land rapidly lost her friends among the Whig leaders of Eng land,[58] for, as it was pointed out, the true Whig recognize that "something is due to the Prince, as well as to th People." [59] Nor did it escape notice that the papers were little too anxious in describing the "undissembled Loyalty with which the king's birthday was celebrated.[60] On on occasion it was observed that "what is remarkable, every thin seemed to be free and natural." [61]

Among the other factors which went into the formation o the political opposition was smuggling, a good old puritan habi

[54] *The Prophet Jeremiah's Resolution* (Boston, 1734), p. 16.

[55] *Journal*, Dec. 11, 1739.

[56] *Courant*, Feb. 17, 1724.

[57] *News-Letter*, Feb. 18, 1731.

[58] *Ibid.*, Oct. 4, 1733.

[59] *Boston Gazette*, postscript, Apr. 30, 1739.

[60] *News-Letter*, Oct. 14, 1731.

[61] *Evening-Post*, June 21, 1736.

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which grew greatly with the increased commerce of the provincial period. It was at its worst in the outlying provinces where the royal authority was weak. A Rhode Island mob rescued smuggled wine in 1719,[62] and two decades later another aided a French smuggler against the customs officer while the sheriff stood by, neutral.[63] In New Hampshire even judges were accustomed to bribe the collector to let in their wine.[64] As yet, however, few families of higher social standing than the Waldrons were engaged in the pastime.[65] Difficulties in Massachusetts were kept at a minimum because the collector there, John Jekyll, was "the Darling of all fair Traders . . . not of an avaricious sordid Temper, but with much Humanity took Pleasure in directing Masters of Vessels, how they ought to avoid the Breach of the Acts of Trade."[66] But eventually Boston had a smuggling riot, after which the collectors complained that they were called "Foreigners who come to take the Bread out of the Natives mouths, and treated as such to that degree, that exerting themselves in the discharge of their Duties" exposed "their Properties as well as persons to the Insults of the common People." In terms strangely like those of 1764 or the prohibition era, the press accused them of planting the contraband on the seized vessels and cast aspersions on their social origins.[67] As early as the twenties enforcement became so unpopular that even sailors and periwig makers in other colonies thought it necessary to advertise in the Boston papers that they had not informed on bootleggers,[68] and the Newport collector advertised to clear a supposed informer who was being accused "with a Design to hurt" his "Character and Interest".[69] On the other hand the popularity of the

[62] Samuel G. Arnold, *History of Rhode Island* (New York, 1859-60), II, p. 64.

[63] *Journal*, Feb. 14, 1738.

[64] *Documentary History of Maine* (Maine Historical Society, *Collections*, 2nd. ser.), X, p. 158.

[65] *News-Letter*, Sept. 12, 1723.

[66] *Ibid.*, Jan. 11, 1733.

[67] *Courant, passim.*

[68] *Journal*, Sept. 4 (2), 1728.

[69] *Boston Gazette*, May 3, 1736.

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royal prosecutor, William Shirley, with certain classes show an ominous divergence of opinion.

The Acts of Trade were not the only statutes whose weigh was straining the bonds of empire. In this early period th timber conservation acts were more flagrantly violated " Patriot " leaders like Elisha Cooke the younger made grea fortunes by using political influence to protect their agents wh were making staves of mast trees, and by fostering local resent ment against the royal officers until a man mistaken for th king's surveyor was nearly murdered.[70] The reality of th Sugar Act and the threat of an iron act caused the reprint o a significant article on liberty.[71] There were complaints als of the act to expedite the collection of colonial debts to Englisl merchants and the act requiring New England sailors and fish ermen to contribute 6*d*. a month to Greenwich Hospital.

Certain administrative policies likewise served to alienat the colonists from the royal authorities. On one occasio Boston jailed a royal press gang,[72] and on another two innocen but red-faced and red-coated men acting suspiciously in Watertown church service sent the able-bodied portion of th congregation flying to the woods to avoid the press.[73]

In the twenties it became evident that the inflation movemen was driving a wedge between the two Englands. " Homespu Jack " advanced arguments for self-sufficient domestic industry and the discouragement of foreign trade by inflation.[74] I would be a " Golden Age " when the colonies were self-suffi cient.[75] Foreign trade was denounced as " a Monster, tha can't be supported upon the natural Produce & Industry of ou Colonies, but must be fed with Silver & Gold: It devours ever Year what might serve for the Subsistence of many Familie of our province, and requires the Skill and Fortitude of som

[70] *Boston Gazette*, Mar. 8, 1731.

[71] *Evening-Post*, June 6, July 4, 1737.

[72] *Courant*, Dec. 9, 1723.

[73] *Evening-Post*, Aug. 27, 1739.

[74] *Courant*, Jan. 11, 18, 1725.

[75] *News-Letter*, Mar. 7, 1734.

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'erseus to destroy it. . . ." [76] Many of the hard-money men xhibited the same isolationist attitude.[77]

Between 1680 and 1740 political and economic change had wept New England back into the current of British affairs. 'here had arisen a new class in the colonies bound to the em- ire by a multitude of ties; and on the other hand the remnants f the old puritan separatist group had been reënforced by housands alienated from the home government by grievances ery different from the old fear for civil and religious freedom. 'he old unity was gone. In 1689 when the colonies rose gainst Andros but few voices and fewer weapons were raised n defense of royal authority; but by 1740 certain classes had ecome so bound to old England that it was inevitable that /hen the ties of empire should be torn away, hundreds of col- nists should come out by the roots.

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[76] *Journal*, Mar. 11, 1734.

[77] *Colonial Currency Reprints* (Prince Society, 1910-11), *passim*.

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REVIEWS

The National Recovery Administration: An Analysis and an Appraisal. By LEVERETT S. LYON, PAUL T. HOMAN, LEWIS L. LORWIN, GEORGE TERBORGH, CHARLES L. DEARING and LEON C. MARSHALL. Washington, The Brookings Institution, 1935.—xxii, 947 pp. $3.50.

Although dismissed by the Supreme Court as a congressional wild oat, the National Industrial Recovery Act remains a notable event in the social history of this country. A group of members of the staff of the Brookings Institution, advantageously situated in Washington, observed the resulting administrative fireworks, even playing a little with the fire themselves, and now present a "painstaking and objective analysis" of their observations.

Appraisal of the Recovery Administration in terms of its administrative organization or its functioning with regard to wages and hours of labor, industrial relations and trade practices results in a notable unanimity among the various authors. Congress, faced with the prospect of serious economic collapse, was either incapable of laying down any broad lines of policy or unwilling to do so. Providing for the suspension of the anti-trust laws, it delegated its policy-making powers to the President. These broad powers were redelegated to a single Administrator with, however, instructions to bring about an increase of wages and to do so with the voluntary coöperation of business. The Administrator visualized only two possible methods of exercising his still vast authority, viz.: "action" and "academic conjecture". He "acted", thus postponing consideration of questions of policy and protecting his administration from the arduous examination of past experience here or abroad in the fields in which it gamboled and gambled.

An elaborate administrative mechanism was established; organizations of the trade association type became code authorities for both the determination and the administration of the crushing volume of new administrative law that was let loose upon the business world. The wisdom of delegating such important power to bodies representing business interests alone was not seriously questioned. In varying degrees of ignorance as to the meaning of code rules that were pre

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ented for approval, almost without statistical information, and without any line of policy, other than wage-raising, the administration argained with industry groups for the best it could get; the dominant bjective was the acceptance of some code by each industry. Rules ere accepted that were so vague as to be meaningless, others were nenforceable because ill adapted to the conditions to which it was ought to apply them. Universal voluntary acceptance proved unttainable and the few "chisellers" bred the many. The rickety achinery for securing compliance broke down and it became evident hat only a huge staff of inspectors organized under a decentralized ystem could obtain conformity to the law.

The subjection of social policy to the principle of inducing the oluntary coöperation of business, advocated by Mr. Hoover as Secetary of Commerce, and the basis of the changes in policy of the ederal Trade Commission in 1925, was vigorously followed in the econd half of 1933. The latest educational principles were applied o the state; it must not impose discipline with "the big stick". n consequence the Recovery Administration with its ornithological tandard was floundering in a morass when the Supreme Court deliv-red the *coup de grâce*. Very little "academic conjecture" would ıave suggested that the silk glove principle of governmental control ıf business is too ladylike to be potent. Business accepted codes equiring higher wages only in return for power to control the market. t obtained clauses authorizing minimum prices, control of output, ›rohibitions on less than cost selling, emergency price fixing and he like as a means of raising prices and sharing the market. Clauses egulating other aspects of business eliminated many indirect forms ıf competition and buttressed the transfer of price and output policy rom the firm to the industrial group. The whole history of the rade association movement in America, indeed of groups with ommon industrial interests in general, is a wearisome reiteration of he faith placed by business in price raising as a relief from financial lifficulties. It does not scorn, indeed it seeks, the aid of the state o implement this policy; it prefers red tape to red ink. Insistence on oluntary coöperation necessarily involved, therefore, acquiescence in narket control by industry groups. Even when changes in perıonnel permitted recognition of the paralyzing effects of generalizing nonopoly policies, the Recovery Administration was powerless to reise its policy. Any attack on the power to control the market shot ıway the basis of the code bargain and with it the principle of voluıary coöperation. To this fundamental weakness of the experiment he authors testify with a convincing volume of specific record.

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The second line of policy, viz., the raising of wages, is vigorously and lengthily castigated as ineffective in fact (indeed a substantial hindrance to revival) and ill adapted to attain the desired acceleration of business activity. In a passage undeservedly relegated to footnote (772) the theoretical possibility of expanding business operations by financing increased pay rolls out of bank borrowing is admitted. Such a policy is rejected because of practical difficulties: business men being unwilling to borrow and bankers to lend in times of depression, i. e., it is inconsistent with the principle of voluntary coöperation. The authors conclude that the increases in prices that even preceded the increases in hourly earnings offset, and probably more than offset, the increased pay roll disbursements and left the purchasing power of labor substantially unchanged. One of their own diagrams (788) shows that average hourly earnings towards the end of 1934 had increased more since May 1933 than the cost of living, and another (834) that man-hours worked were on a higher level during the first eighteen months of the operation of the act than immediately prior to it. The real income of labor did, therefore, increase after the act, and the contention that the increase was not due to the wage-raising policy pursued under the act rests upon the assumption that, while other influences operated in a contrary direction, the Recovery Act "affected the volume of production adversely", an assumption plausible enough but incapable of proof from the statistics cited.

Recovery should have been sought, according to the authors, by removal of deterrents to the free and prompt utilization of the existing money of the country, and by monetary expansion. They do not indicate the deterrents they have in mind nor the proper methods of securing the circulation of an increased supply of money. Had they done so they might have been compelled to recognize that their own policies also present practical difficulties. They "feel certain" that the boosting of costs by the N. R. A. was an unwise method of preventing further reductions in costs and prices; wage reductions during the depression were not excessive where paralleled by equivalent reductions in the cost of living, in fact wages were "high" and there was no justification for placing a "bottom" under them and less for raising them; raising costs when demand is shrinking accelerates the reduction of activity. If the practical difficulty of the policy pursued lay in the unwillingness of business men to incur losses for the sake of securing a subsequent general recovery, account must also be taken of the effect of falling prices and falling wages upon profits and, therefore, upon business policies.

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This sharp appraisal of the Recovery Administration is paralleled by no similar evaluation of its contribution to the larger problem of the adjustment of the business organism to social ends. The Recovery Administration is justly criticized for the lack of long-term planning, either by business groups or the administration. In consequence, the authors conclude that the perpetuation of the administration would have saddled us with unwise policies and an inappropriate administrative machinery. They reject the possibility of a reorientation of policy because it rested upon the rotten foundation of voluntary coöperation with business. This judgment is open to argument. But if voluntary coöperation can lead only to unsound policies and ineffective enforcement, what is the alternative? No intervention at all? The authors frequently remark that this problem is one for serious study and congressional determination. But do their observations offer no more assistance to students and Congress than a conclusion that the method of the Recovery Act was hopeless? Skepticism concerning any considerable extension of government control rises from their pages and occasionally finds expression; control of long-term investment, for instance, should await proof that it will direct the process of capital formation to more useful purposes than private investment and that devices are available for preventing the control from protecting monopoly positions. They have been over-impressed by the first Administrator's preference for "action" over against "academic conjecture". They recognize the sclerosis of the economic arteries consequent upon the increasing rigidity of prices "in many lines of business" resulting from "private agreements or regulation by the government" but proceed only to a condemnation of the N. R. A. for carrying this ossification further by placing a "bottom" under wages. Their condemnation of the abusing of the policy of the N. R. A. on voluntary coöperation suggests at least some consideration of state intervention upon some other basis. If such consideration is rejected because it implies severe restriction of the profit motive the issue were better brought into the open. Does the reference to an economy "based upon a price system" (376) mean an economy based upon private profit? In view of the decline, in the absence of effective state intervention, of the free market upon which such a system rests, the conclusion that the state should do nothing to further that decline is a very small contribution to the solution of the very large problems presented by the National Recovery Adventure.

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The lucidity, order and comprehensiveness of this study make i the standard work on the Recovery Administration. The author make full allowance for the difficulties of the administration. Bu they write from Missouri when handling broad social issues and fror Washington when dealing with the more immediate reactions o policy. To ask for more regard for the temporal and the industria setting of the adventure is perhaps to take an avid if not an un gracious line. No attempt has, however, been made to examine th course of events in industries obtaining the various types of code: The reports of the Federal Trade Commission on the code for th iron and steel industry are mentioned but their contents are nc indicated, nor is any use made of the evidence gathered by the Con sumer Advisory Board.

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The Cambridge Ancient History. Volume X. *The Augusta Empire 44 B. C.-A. D. 70.* Edited by S. A. COOK, F. E. ADCOC and M. P. CHARLESWORTH. New York, The Macmillan Co. Cambridge, at the University Press, 1934.—xxxii, 1057 pp. $11.0(Volume IV of Plates. Prepared by C. T. SELTZMAN. xiv, 210 pp $4.00.

From the time of his occupation of Egypt in 30 B. C. until th day of his death in 14 A. D. the figure of Augustus Caesar dominate the world of the Mediterranean Sea. His peculiar importance : expressed in the fact that even his features tended to re-appear i the portraiture of the members of his family and of his successors i the principate throughout the important epoch covered by this volun (Eugénie Strong in chapter 17 upon the "Art of the Augusta Age", p. 559). The editors of the Cambridge Ancient History wer therefore justified in assigning to the discussion of the achievemen of this man and the culture of the period of his rule eighteen out (the total of twenty-five chapters of this long volume. The dom nance of his personality has given a unity of structure to the prese tation of the century from 44 B. C. to 68 A. D. which could not l attained in any of the previous nine volumes. In the admirable sun mary of his character and work in chapter 18, written by F. I Adcock, Augustus is depicted as a man almost devoid of brillia talents, not to speak of genius—correctly so, in my judgment. Tl editorial board, of which Mr. Adcock is a member, is no doubt r sponsible for the fact that the total impression of his personalit

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hich is a composite of the views of fourteen different writers, re-
ains so consistent throughout the volume. To the reviewer it
ems that the picture is too unified. It is difficult to believe that
ctavian was moved in 44 B. C., after the assassination of Julius
aesar, by the "white heat of fury" against his murderers which,
1 page 7, is ascribed to him by M. P. Charlesworth. The young
an who could be persuaded by political calculations to support the
ssassin, Casca, for the office of tribune (p. 12), who associated him-
lf in the proscriptions with a ruthless logic, was more strongly
tuated, as it seems to me, by motives of self-preservation and of
lf-interest than by any heat of avenging passion. It is not psycho-
gically inconsistent that the young Octavianus who began his career
in a revolutionary way" (see p. v of the Preface) should later,
hen he had attained a secure position, display those qualities of
straint and mercy which so strongly characterized him as Augustus
aesar, the *princeps*. In the later period he showed not the slightest
ndency to believe in a sudden salvation through revolution. He
uld wait with serene patience, take one step after another with a
reful and healing realism, and maintain order as he moved, in a
orld which sorely needed order, recognized that fact, and judged
at he was the man who could, and would, maintain order.

A gradual change in editorial policy, which is to be welcomed, has
me about during the progress of this monumental series toward its
mpletion. It consists in a liberalizing of the original editorial
striction against footnote references. This change has certainly
lded to the value of the series for professional historians and should
ot detract from its attractiveness for lay readers.

To the reviewer the discussion of the "Economic Unification of
e Mediterranean Region" (ch. 13) by Friedrich Oertel of the Uni-
rsity of Bonn, is the outstanding chapter of this volume in origin-
lity, merit and interest. It is recommended to economic historians
r its compactness and its accuracy, both of detail and in the general
ew. Oertel does not mention the Rodbertus-Bücher theory of
ncient economic life as being of the *oikos*, or household type, or Max
Veber's famous and harmful contrast of the man of antiquity as *homo*
olíticus and medieval man as *homo economicus*; but both of these
ews are here completely sunk by weight of the facts which he pre-
nts. W. W. Tarn and M. P. Charlesworth have covered the first
urteen years of the political life of Octavianus Caesar, from 44
. C. to 30 B. C., in chapters 1-4, which are admirably written.
arn's psychological interpretation of the clash of the three out-

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standing figures of these years, Octavianus, Antony and Cleopatra and his analysis of the break between Octavianus and Marcus Antonius, upon the basis of their divergent personalities and ambitions, highly interesting. H. Stuart Jones has done chapters 6 and upon the constitution and legislation of the Augustan principate, competently and with great lucidity. The reviewer does not agree with his view that the Senate under the Julian-Claudian line did not "strictly speaking, make law by its decree" (p. 166), but tendered advice only, to the magistrates. The *leges de imperio* granting powers to the Emperors were passed by the Senate (p. 140) and they surely fall under the head of constitutional law. Likewise the decree of 4 B. C. found at Cyrene, which established a new court and a new procedure at Rome for cases of provincial extortion, emanated from the Senate. Two chapters, one upon imperial administration the other upon the composition and organization of the imperial army and navy, have been written by G. H. Stevenson of Oxford. A slight error is to be noted upon page 197 in the statement that the tax on sales of slaves was introduced by Augustus at the 4% rate which it had reached under Nero (see Tacitus, *Annals,* VIII, 31). According to the definite statement of Cassius Dio (LV, 31) the rate originally fixed by Augustus was 2%.

The handling by Augustus of the problem of the eastern frontier which continued to be a constant source of difficulty throughout the history of the Empire, has been ably dealt with in chapter 9 by J. C. C. Anderson, and the frontier policy of the west and north by Ronald Syme, who includes in his discussion the Spanish provinces and imperial relations with Northern Africa (ch. 12). The discussion of the special status of Egypt in the Empire was assigned, with good judgment, to the able papyrologist, H. Idris Bell. The last ten pages of his chapter deal with the economic life of that country with the recurrent troubles between the Jews and "Greeks" in Alexandria, and with the spirit of Roman rule as it appears in Egypt. On the basis of recent evidence he shows that the deadening effects of governmental compulsion, particularly apparent in the field of taxation, were already manifest before the death of Nero in 68 A. D.

In the view of a non-specialist in that field Professor A. Momigliano of the University of Rome has not been successful in leaving a clear picture of the party strife in Palestine in the reign of Herod (ch. 11). His explanation of Herod himself (pp. 331-332) is interesting, though it is open to doubt whether the element of passion

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. the man was anywhere near so powerful as that of calculation in ıe service of a limitless ambition. The treatment of Nero by omigliano (ch. 21) and that of the Jewish rebellion of the years 5-70 A. D. (pp. 850-861 of ch. 25) are much better. He there aves a sharper impression of the tragic results of the inability or e unwillingness of Roman administrators to understand the closed ıd bickering microcosm of the Jews of Palestine. In chapter 14 ritten by Hugh Last upon the "Social Legislation of Augustus", e laws upon manumissions which were passed under the direction Augustus are presented as a part of a unified social program. ugustus was attempting, according to the theory followed here, to strict the amount of the infusion of foreign blood into the veins the old Italian stock which was constantly occurring through the troduction into Italy of Greek and Oriental slaves (p. 479). lthough this is the traditional and generally accepted formula, one ay doubt its accuracy. It is based upon the error of tabulating ıves who bore Greek names as being necessarily of Asia Minor Greco-Syrian origin, whereas the name of a slave seldom indicates ything as to the ethnic stock from which he or she derives (Gordon, *urn. Rom. Studies,* XV, 97 *et seq.*). Actually the number of the ıves born from permitted slave companionship (the *vernae*) was creasing greatly in Italy under Augustus (*cf.* Varro, *de re rustica,* , 10, 6). The slave and freedman enactments of Augustus must dealt with differently, purely as slave and freedman legislation, der the general and guiding principle of the "hierarchy of orders" ıich Augustus desired to establish (see H. Stuart Jones, p. 177, d compare M. P. Charlesworth's phrase regarding the preservation the "distinctions between grades", p. 693).

The religious development under the early principate has been trusted to the competent scholarship of A. D. Nock of Harvard ıiversity (ch. 15). T. R. Glover of Cambridge has correctly ıtricted his discussion of Roman literature in chapter 16 to the ıe of Augustus' rule. It is impossible within the scope of a limited ·iew to comment upon the seven chapters on the period covered by Claudian emperors and the year of civil war after Nero's death th which the volume closes. They show the same qualities of nest work and firm scholarship which distinguish the earlier and ıger section upon the Augustan Age.

Volume IV of the Plates has appeared contemporaneously with ılume X of the text. It contains numerous reproductions of coins, ra cottas, reliefs, statuary, wall paintings and buildings illustrative

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of Volumes IX and X of the text. As illustrations they are w selected and the plates are clear. They visualize for the reader t cultural unification of Italy under the Roman city-state through t Romanizing of the divergent modes of artistic expression original prevalent in the Italian peninsula. Miss Strong has used the mon ments of the period of Augustus which are presented in the volu of plates, with fine skill and taste in her chapter upon Augustan a

WILLIAM LINN WESTERMANN

Civilisation and the Growth of Law: A Study of the Relatio between Men's Ideas about the Universe and the Institutions Law and Government. By WILLIAM A. ROBSON. New Yo The Macmillan Co., 1935.—xv, 354 pp. $2.50.

Dr. Robson is known as an authority on English local governme and administrative law, but in this book, the object of which is " depict the interactions between people's ideas about the universe the one hand and the laws and government of mankind on the other he writes as an amateur (in the best sense of the word) rather th as an expert. Only a specialist in omniscience could be expert all the subjects upon which he touches, from primitive cult through ancient, medieval and modern jurisprudence to the m recent scientific conceptions. This might be called an essay in t decompartmentalizing of knowledge, and the author disclaims a merits for it beyond what may be found to lie in its " conceptic arrangement, and method of treatment." Thoughtful reade whether of humanistic or scientific background, will find in it mu food for reflection.

To the present reviewer the most interesting subject raised by t study is the historical development of the relation between scienti law and jural law. They have long been so far apart that they se to have nothing in common except the name of law, but to the h torically-minded there is something in a name—Juliet to the contr notwithstanding. These two kinds of law have, indeed, a comm ancestry, and it may be that they will come to seem less dissimi than they did in the prevailing view of the nineteenth century. Su at any rate, is the opinion of Dr. Robson.

The common ancestry is to be found in primitive magic and sup stition, in which the laws of man and the laws of nature alike rooted. The early law-giver was at the same time an embryo scientist, as well as a priest, explaining natural phenomena in ter

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f magic and superstition and basing rules of human conduct on ıe same forces. "The idea of Law grew up historically as the pposite of fortuitous occurrence on the one hand and of arbitrary ccurrence on the other. In the one case the opposition led to the lea of physical law, in the other to that of civil law" (p. 8). And ; long as the two kinds of law were thought of as emanating from ıe same source (God or Nature or Reason) they were looked upon ; concomitant parts of a single world scheme. To St. Thomas quinas the law of moral obligation and the law of physical necessity ıited in "the idea of God as the supreme ruler and law-giver of ıe universe" (p. 196). In the seventeenth century the concepts of ıiversality, immutability and rationality connoted by "the Law of ature", a term that originated with jurists, were applied by men science in the realm of physical phenomena. The expression laws of nature" was not used in the scientific sense before the venteenth century, and those who so used it regarded these "laws" commands laid by God upon matter. When Newton called his ws of motion *leges* he was using a word that connoted enactment ıd command (p. 246). By what Dr. Robson considers a "curious ony", the author of Boyle's Law protested against applying the term laws of nature" to physical matter on the ground that a law was a le of conduct in accord with the will of a superior, and only an telligent being could be capable of receiving and acting in obedience it (p. 235).

Dr. Robson believes that recent thought in the fields of science ıd of jurisprudence shows a tendency toward reintegration. Science s traveled far from the days when laws of nature were regarded divine commands, though eminent scientists of our own day use ords borrowed from jurisprudence when they speak of phenomena obeying" laws, or of laws "compelling", "forbidding" and llowing". And jurisprudence is no longer satisfied with Austin's nception of command as being the essence of jural law, which ght to be considered, so Dr. Robson thinks, as "a formulation of e pattern of social behaviour, a view comparable to the conception scientific law as a formulation of the pattern of physical be-viour" (pp. 306-7). The recent questioning of determinism in ysics may seem also to lessen the gulf between jural law and entific law. "The average human being appears to be a more w-abiding creature than the modern Schrödinger atom" (p. 337). ıt it is to "the legislative activity of the human mind" that Dr. obson looks chiefly as "the most significant phenomenon in any

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attempt to relate jural law to natural law" (p. 338). It is th human mind "which both formulates the pattern of physical condu we call natural law and also establishes the pattern of social condu we call human law" (p. 328). The human mind, in this vie takes the place formerly held by God or Nature or Reason as th source of both kinds of law, though they are no longer looked upc as eternal or immutable; and it can be said that the human mind h changed the laws of nature as fundamentally as it has changed th laws of men.

But whatever may be the developments in science and jurispr dence, this difference between their respctive laws seems likely to permanent: changes in jural law affect the behavior of human being changes in scientific law do not affect the behavior of natur phenomena.

ROBERT LIVINGSTON SCHUYLER

The Caribbean Area. Edited by A. CURTIS WILGUS. Wash ington, The George Washington University Press, 1934.—v 604 pp. $3.00.

This second volume of *Studies in Hispanic American Affairs* edit by Professor A. Curtis Wilgus, consists of a series of lectures d livered at George Washington University in the summer of 193 It covers a large field, dealing not only with the political and ec nomic problems of the smaller Caribbean republics but also wi Mexico, Colombia, Venezuela and Puerto Rico. The lecturers, w represented several different points of view, were in many cases pe sons well qualified by practical experience in the Caribbean regi to discuss their subjects, but one feels that their contributions wou in a few instances have been more interesting if they had dealt a greater extent with the results of personal experience and observ tion instead of presenting a large amount of historical data a statistical material which can be obtained from other sources.

It is not practicable, in a short review, to discuss the contributi of each of the fifteen authors who collaborated in the book. Amo those who delivered extended series of lectures were Mr. S. G. Inma Professor Leland Jenks, Mr. Roscoe Hill, and Professors W. Calcott, W. W. Pierson, Jr., and Chester Lloyd Jones. Mr. Inma rather general description of the international significance of t Caribbean and of political life in the region contains several accuracies, such as the location of the Central American Court

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istice at Corinto, Nicaragua, and the astonishing statement that "in e year 1924 eleven of the twenty Latin American countries had eir financial policies directed by North Americans, six Caribbean untries having United States marines backing such direction"; it his lecture on social life is one of the more interesting portions the book. Some looseness of statement also mars Professor Jenks's ctures on the Dominican Republic and on Haiti: one is surprised read that President Trujillo "had worked his way up from the nks in the American marines", and the statement that "there was most no attempt whatever" to train Haitians for the conduct of e treaty services would hardly have been made if the author had id an opportunity to observe the success with which Haitians ained in these services have carried on important features of their ork since the withdrawal of American control. In his lecture on uba, on the other hand, Professor Jenks paints an interesting cture of the situation as it existed in the summer of 1933, speaking ith the authority of one who has actually studied his subject on e ground.

Mr. Hill's chapters on Central America paint a substantially curate picture of the five republics of the Isthmus. One wishes, wever, that the author had drawn more upon his long experience Nicaragua and less upon books of reference, for a fuller dis- ssion of present-day political problems and of the actual workings the unusual relationship between the American and Nicaraguan vernments before 1933 would have been more interesting than uch of the material which he presents.

Professor Calcott attempts with some success the very difficult task discussing the political, racial, religious, social and economic oblems of Mexico in five short chapters, which give a well-rounded d interesting account of contemporary conditions in that country. rofessor Pierson's chapters on Venezuela are less extensive in scope, it his analysis of the factors which govern Venezuelan political e is suggestive and important. Professor Jones's five lectures, hich conclude the body of the book, deal with the problems of the aribbean region as a whole from a broad, general point of view.

One of the most interesting and scholarly portions of the book Dr. Gil Borges' essay in the Appendix, on the Historical Back- ound of Constitutional Organization in Hispanic America. Dr. il Borges demonstrates with a wealth of precise detail that "the ots of our [Hispanic American] ideas and institutions are found the past". Tracing on the one hand the development of the

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spirit of local autonomy, as exemplified especially in the *cabildo,* a on the other that of the tradition of centralized authority, in Spa and in the colonies, he seeks to demonstrate that the forces of dece tralization and of centralization "continue today as dynamic facto in the constitutional evolution of the republics of Hispanic America and that "the conflict of these forces has produced the social a political revolutions and the frequent changes in the constitution structure of the Hispanic American nations".

DANA G. MUNRO

PRINCETON UNIVERSITY

Chester A. Arthur: A Quarter-Century of Machine Politic
By GEORGE FREDERICK HOWE. New York, Dodd, Mead & Co pany, Inc., 1934.—xi, 307 pp. $4.00.

Chester A. Arthur's administration stands forth as one of the fin this country has ever had. The Florida *Times-Union* some yea ago referred to General Arthur as the greatest President in a ce tury, because he served the whole people and not a faction or part and because there was no sectional or southern problem at the clo of his term. "To President Arthur", said the *Times-Union*, "sou was a direction, not a problem to be constantly flaunted."

Professor George F. Howe has performed a service in writing t first biography of Chester A. Arthur to appear since the brief sket of the 21st President by William O. Stoddard in 1889. That Arth has been so long neglected is no fault of the biographers; the u availability of material, and failure to sense the significance of h administration were responsible.

Arthur was, in fact, the first of our modern presidents. Ma fundamental policies and problems of our government today receiv initial impetus in President Arthur's administration. His presiden saw the first enactment of Civil Service reform, and the initiati of Chinese immigration restriction, since adopted as a permane policy. He made the first aggressive move to abrogate the Clayto Bulwer Treaty, essential to an American-built Isthmian canal, project to which Arthur was definitely committed. He sponsored t program for a fleet of steel-clad naval vessels, and may justly cla to be the father of the modern navy. Though a Republican, recommended tariff revision downward; he took the initial ste which banished lotteries from American soil; and he repeatedly voic his opposition to silver inflationary measures. He took an intere

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in conservation of our natural resources and was the first President to enter Yellowstone National Park.

In the popular mind, Chester A. Arthur has been thought of as a gentleman and epicure only. Dr. Howe shows his importance in the machine politics of the last century, his statesmanship, and his courage as President. This last is important in understanding the man. His veto of the River and Harbor Bill was but one instance of the courage shown by a man from whom the country had expected cheap reprisal and political maneuvering. Few who had been through the bitterness of Half Breed-Stalwart warfare would have failed to punish enemies and reward friends if placed in Arthur's position. He proved a man of honor as well as a statesman.

Howe has made use of much unpublished material and too much cannot be said of the collection belonging to Misses Susan and Alice Arthur, of Cohasset, Mass., from which he quotes generously. Valuable portions of this collection were not used, however, and none of the interesting Arthur family pictures is to be found in the biography.

Numerous available sources apparently were not tapped by the author. He devotes two brief paragraphs to Arthur's mother's (Stone) ancestry, and one paragraph to his father's background. As the genealogical history of the Stone family is in print, there is no excuse for this omission. The date of Arthur's birth is incorrectly given by Professor Howe as by every previous biographer; it is derived doubtless from the first newspaper account of the vice-presidential nominee. The date is correctly given in the Arthur family Bible record, and in the Rev. William Arthur family Bible, in the handwriting of President Arthur and his father, respectively. Evidently Howe didn't see these family Bible records.

Other sources not used include many of the parish records throughout Vermont and New York, revealing important influences at work in Arthur's early years, and the collections of local historians, including Mary Root, G. A. Thurston, George R. Howell, and others. Even records of Arthur's student days at Union College, on file in the Alumni office and in the homes of officials of Old First Church, Schenectady, were missed by the author.

In spite of the excellent sources which Professor Howe has unearthed, and his painstaking search of newspapers and private collections, it is disappointing to note that he does not seem to have used the Mary Arthur McElroy White House Collection, with its rare letters, documents, state papers, household memoranda, etc., which

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shed a revealing light upon the delightful home atmosphere of th Arthur family; there is no evidence of his having seen the intimat account in the Frank B. Conger Collection, covering the Star Rout prosecutions and the nominating convention of 1884. Judge Alde Chester's valuable account of the Albany episode is available in manu script form, but has been overlooked.

Among the timely anecdotal contributions of publicists and states men which might have been used are those of Solomon Bulkle Griffin, George Alfred Townsend, Matthew P. Breen, Erastu Wiman, Edward P. Mitchell, Mary Clemmer Ames, Henry Gassa way Davis, Mrs. John A. Logan and Cameron Rogers. Although i is a valuable contribution to Americana, Howe's *Chester A. Arthu* is not a definitive biography.

VERNON B. HAMPTON

WEST NEW BRIGHTON, N. Y.

Deutscher Sozialismus. By WERNER SOMBART. Berlin Bucholz & Weisswange, 1934.—xvi, 347 pp. Rm. 4.80.

In his latest volume Professor Werner Sombart attempts to elimi nate every definition by content from the concept of socialism. H defines socialism formally as social normalcy, the social norms bein determined by the community and having national characteristic According to Sombart social norms, set for Germany by the Germa political union, result in typically German Socialism. The limita tions the author imposes upon his consideration of the problem a the outset make for obvious difficulties; Sombart himself confesse that the purely formal concept of socialism can lead to an ident fication of German Socialism with the "Prussian spirit". "Bu the idea of the Prussian spirit placed on the same level with socialis is repugnant to us", Sombart acknowledges. However this confe sion does not prevent him from conceding that nationalistic decre imbued with the Prussian spirit have some characteristics of socia ism. As Sombart proceeds to disclose the characteristics of Germa Socialism he has to admit that the German people are a pronounce racial mixture. Nevertheless he agrees with the official Nazi vie that the Jewish element should be distinct and isolated. No proc as to the necessity or desirability for such a condition is advance by the author. Concerning specific German spiritual qualities, Son bart advances the assertion that German character types are unusuall varied and that the individual German is a person of many inn contradictions. As a final result of his rather vague investigatic

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of German traits the author established the thesis that instead of that which *is* German, there must be voluntarily determined that which *should be* German. Sombart literally describes this phase of his consideration of the problem in the following words: "Our road was the road of empirical research. We must now abandon this road and take another. Which path that shall be cannot be a matter of doubt: it is the royal highway of metaphysics, the road that leads out of the bathos of experience into the brilliantly lighted realm of ideas." The German people, as seen by Sombart, are a people of spirit and action. But exactly why these traits are bestowed only upon the German people cannot be gleaned from the author's explanations. From the watchtower of metaphysics Sombart also proclaims his repudiation of Marxist proletarian socialism and its hedonistic dream of a state of happiness in which there is nothing more to be desired. However, upon examination of the dialectic basis of Marxian socialism, this conception of Sombart's loses its validity. The Heraclitic expression *Panta rhei* is the main principle and device of dialectic materialism while the state of complete happiness as described by Sombart would on the contrary signify stagnation. Sombart's antipathy towards the metaphysical fundamentals of Marxism does not prevent him from entering, with Marx, into the analysis of the capitalist economic system, but he concludes that one of the mainstays of Marxist analysis, the theory of concentration, cannot be considered universal and absolute. According to statistics cited by Sombart, the farmer, the artisan and the small and medium-sized business men maintain an independent position even in the age of monopoly capitalism. The author neglects, however, in this latest volume, to touch upon the problem of the complete economic control of these smaller enterprises by high finance and big industry. Maintaining that the abandonment of the Manchester school in the practices of world economy forces Germany to master her social and economic problems in her own way, Sombart favors a planned economy based on private ownership and inclined towards self-sufficiency. Here he approaches the standpoint of economic nationalism, but he gives no solution for the world economic crisis. Many of the contradictions of Sombart's book, however, mirror the state of affairs in Germany today, and serve as clues to an understanding of the spiritual and economic problems of the Third Reich.

DR. PAUL CROSSER

NEW YORK CITY

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International Narcotics Control. By L. E. S. EISENLOHR. London, George Allen & Unwin, Ltd., 1934.—295 pp. $4.00.

The writer gives a very brief summary of the history of the movement against narcotics prior to the creation by the League of Nations of the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs. She then examines the work of the Opium Advisory Committee and the genesis and development of the international machinery for combating opium through the creation of the Permanent Central Opium Board, in the Treaty of 1925, and finally of the Supervisory Body in the Treaty of 1931. She has given an interesting picture of the development of international treaty law, akin to legislation, regulating a social question of interest to the international society and setting up international machinery for its administration. She has drawn her material principally from the League documents, though she has not neglected the books of other writers on the subject.

Working in Geneva and on the materials of the League, the author appears to the reviewer to have underestimated the difficulties with which the development of international social control in narcotics has been accompanied, and for this reason, the reviewer is inclined to think that she has undervalued the work of the Opium Advisory Committee. Her own statement of the accomplishments of the Committee (pp. 148-149) shows that they were not inconsiderable, and her interesting discussion of the influence of its experience and discussions on the Convention of 1925 (p. 89) and that of 1931 (pp. 90-98), and of the origins of the Permanent Central Opium Board, are another indication of the effectiveness of the League organ. The reviewer agrees with the author that the members of the Board, as representatives of the governments most interested in production, manufacture and traffic in narcotics, often obstructed action, but he thinks the author did not give sufficient credit to the remarkable efforts of certain members of the Committee, particularly Sir Malcolm Delevingne of Great Britain, nor does she give the weight which the reviewer is inclined to ascribe to the Committee as a rallying point for the important private groups that were constantly pushing forward. The Committee, and the League through the Committee were, in the opinion of the reviewer, essential to this truly striking development of international administration.

As the author notes, international regulations are only possible through the consent of governments in the first place, and their successful administration can only be accomplished through close

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oöperation of the governmental organizations (p. 197). This point he develops in her treatment of the work of the Permanent Central)pium Board, showing how, through evidence drawn from its own xperience and through its tact, the Board dealt with a thorny subject nd had a large share in persuading the governments to adopt the ride extension of international administration which was effected ı the Treaty of 1931 and the creation of the Supervisory Body.

The reviewer thinks that in a study on smoking opium more place hould be given to China and to the possible threat of increased pro- uction of the poppy in China. He agrees with the author that this hreat is not a complete excuse for failure to go further in the control f opium smoking, but he believes that the author has not given ufficient space or attention to China, and especially that she should ave included both that country and Manchuria in the list of "lead- ıg opium growing states".

J. P. CHAMBERLAIN

'apers Relating to the Foreign Relations of the United States, 1919. Volumes I and II. Washington, Government Printing Office, 1934.—xcvii, 894; lxxxi, 913 pp. Cloth, $1.75 each.

With traditional care in editing and format, the official documents n Foreign Relations for 1919 have now been made available. In- luding both instructions and dispatches, they are set forth alphabeti- ally from Argentina through Yugoslavia, with Russia a conspicuous)mission. Their appearance marks a milestone in the series. The var becomes a retrospect and the world moves on to consequences vhich must unfold through many a volume yet to come.

With due attention to the formalities of an official protocol, with nuch that seems detailed and even trivial, conceivably with much)mitted that to a functioning government might seem an indis- :retion to reveal, these heavy tomes lend added countenance to the hought that diplomacy is after all a glorified consular service, whose)rime objective is the settlement of business disputes or the further- ng of business aims. Assuredly these documents contain no refuta- ion of the economic interpretation of history. But of course they ıre more inclusive than mere economics. Life and passion lurk)ehind their formal phraseology.

With Great Britain our relations remained of maximum im-)ortance, either direct or through commercial rivalry abroad. Diplomacy prescribed the visit of the Prince of Wales to Washing- :on and New York. Equally it covered Anglo-American rivalry

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over the iron industry and ship construction in Brazil, internationa solicitude over Canadian fisheries, British (and French) concer over the former German cable to Liberia, intense British oppositio in the Palestine Mandate to the interests of the Standard Oil Com pany of New York, offset in some degree by corresponding Britis encouragement for the assumption by the United States of a mandat over Armenia—more altruistic but apparently less lucrative than o concessions near the Mediterranean.

Not impossibly the future historian of the Orient may seek som of his data in the files at Washington, even as the historian of an other time and place looks to Venice, to London, or The Hagu Certainly the quarterly reports of the experienced minister, Paul S Reinsch, were models of sound presentation concerning disintegrat ing China. In the minister's opinion instinct alone, or at the bes opportunism, characterized the policy of China in a desire to stav off Japanese aggression by any means at hand until the Wester powers could come to her assistance by reëstablishing the equilibriur of foreign influence. On the other hand, Reinsch noted that th Japanese attributed their own unpopularity in China to propagand by Americans. The Senate's attitude on Shantung in 1919 improve the status of Americans in China; whereas in Tokio it scarcel commanded a similar respect. Briefly stated, an empire in collaps precipitated a wealth of problems political and economic which i the present work are elaborated rather fully.

Thus with Japan as with Great Britain our relations were mor critical at the periphery than in the center. Picture brides in Cali fornia were somehow less alarming than the emergence of a reall mighty Trans-Pacific Empire.

If Europe and Asia marked two planes of foreign policy, th Latin-American world contributed its third dimension, leaving Tim as always to raise all to a fourth. Highly interesting at this tim was a negotiation with Colombia in a frankly business-man's en deavor to purchase good will lost by Roosevelt in Panama. Repudi ation of his policy was effected by Republicans eventually. Terms o payment were complicated somewhat by the uncertain legal statu of subsoil rights in Colombia, a controversial issue similar to tha in Mexico, where a vigorous effort was in progress to subordinat foreign rights by contract to the ancient theories of national or eve tribal ownership.

Among our Latin neighbors Costa Rica required consideration i a degree proportioned to its oleaginous rather than its territoria

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mportance. Here again the rivalry was evident between Great Britain and ourselves in a region significantly near to Panama. Cuba, too, was by no means in a state of equilibrium. Santo Domingo was resentful at restrictions upon her sovereignty. Guatemala sorely needed the sound advice on fiscal matters of Professor Edwin Walter Kemmerer. Haiti was in bitter mood, critical and captious. An insult to the flag by drunken hoodlums n Honduras called for investigation. In Ecuador the chief bone of contention was service of the debt on the Guayaquil and Quito Railroad.

Incidental touches in the diplomacy of this confusing year were he visit of the King and Queen of the Belgians to the sick room of President Wilson, greetings to the war-born republic of Czechoslovakia, preparations for the sending of a minister to Finland, oncern for Jews in Poland, and a perception, hardly clear as yet, f pending Japanese designs upon Manchuria.

All in all the Department of State here lifts the veil upon an nteresting and varied year. From its multitudinous details emerge n partial outline the leading topics of diplomatic interest for the ollowing decade. Some problems are indeed adumbrated whose olution still awaits.

LOUIS MARTIN SEARS

PURDUE UNIVERSITY

Capitalism and Its Culture. By JEROME DAVIS. New York, Farrar & Rinehart, Inc., 1935.—xvii, 556 pp. $3.00.

This volume from the prolific pen of Professor Jerome Davis of he Yale Divinity School, is a rather extensive compilation of the opular literature of protest against the existing order of things. Its urvey includes discussions of the maladjustments in production and istribution, the degraded position of the middle class, workers and armers, the irresponsibility and depredations of financial leaders, nd the apologetic character of orthodox economics, but is primarily oncerned with the corroding influence of the "capitalistic" spirit n politics, religion, education, morals and consumption. Religious eaders are the only class relatively free from the devastating ethics f profit. The author states in the first chapter that we shall probbly recover from this depression and constantly he repeats in the emaining chapters that the era of capitalism is over.

His method is not that of proceeding by way of a clearly conceived oncept of "capitalism" into a detailed analysis of the process of

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economic life and its ramifications, but that of piling up evidenc drawn from newspapers, popular magazine articles, books, and con versations, and proceeding at the same time along a great number o fronts and positions as presented by past and present varieties o dissenting schools of thought. The "capitalistic" culture discusse is not that of Marx or Veblen, but the vague type of economic organi zation and social life which has been the center of attack on th part of Christian socialists, leaders of agrarian revolts and liberal of past decades, and their present counterparts. It has heretofor been referred to as monopoly and conceived of as a departure fror accepted and approved economic and religious values.

The author defines capitalism on page 6 as "*the economic syste under which production, distribution, and finance are becoming con centrated into large-scale interrelated units, and controlled by minority who run them for private profit.*" (Italics are those o Professor Davis.) On page 224, he defines his pivot conceptior "profit". Here he uses an "orthodox" viewpoint. "Profit is nc a reward for service." It is not wages, salaries, fees, interest on in vestments or rent. It is the surplus "after all expenses have bee paid, including . . . salary to management, and interest on invest ment", a surplus over expenses. With such a view of profits a "orthodox" economist might not find it very difficult to show tha most of the author's charges lose their force. Even the great re turns of captains of finance might be justified as "salary of mar agement", or "interest on investment", or possibly as "fees" c "rent". Likewise the most significant evils of "capitalism" in th realm of "culture" might be shown by one of a Veblenian turn c mind, to be due not to Professor Davis' "capitalism" or profit spiri but to what might be conceived to be the natural order of thing implied in his discussion of the above shares in distribution, as legit mate rewards for services. Marxians might amuse themselves by a tempting to show that throughout, the author uses concepts quit similar to those used by Fascism, German or Italian, which he abhor but this would be to overlook his strong sentimental impulse.

In the light of the familiar charges presented, the interest in th study lies in his justifying it in the beginning as an appeal to actio asserting repeatedly that mankind has sufficient knowledge to remed the abuses, and assailing the passiveness of intellectual leader Consequently, even those attacked might have some ground for anno ance with his refusal in the end to present concrete plans of soci organization and action, and his defense of his work not as a trea ment but an examination of a "social and pathological condition."

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Essentially Professor Davis is attempting to rewrite Veblen's *heory of the Leisure Class,* but this requires a freedom from re-ived preconceptions that conditions have apparently not yet created. rom the author's conclusion there would hardly be any dissent: We must reduce maladjustments to the lowest possible minimum."

JOSEPH DORFMAN

COLUMBIA UNIVERSITY

he Budget in Governments of Today. By A. E. BUCK. New York, The Macmillan Co., 1934.—vi, 349 pp. $3.00.

The term budget has untold meanings. We use the word when e are speaking of national fiscal programs, of official documents, of ms of revenues or expenditures and of ministerial speeches. Books aling with budgets have not avoided a tendency towards a similar nfusion of ideas. The economic, financial, political, social and chnical aspects are simultaneously discussed to the bewilderment the unhappy reader. The works on budgets by such authorities Allix, Jèze, Neumark, Stourm, Willoughby, as well as a former udy (*Public Budgeting*) by Mr. Buck, all evidence this inclusive proach.

In his latest study, *The Budget in Governments of Today,* Mr. uck has wisely chosen to limit himself to a survey of the admin-trative phases of national budget systems. The study is mainly an alysis of the political and technical features of financial adminis-ations. When these limitations are exceeded the result is not very couraging.

The major portion of Mr. Buck's book is devoted to a considera-on of three factors: the distribution of budgetary powers and func-ons between the executive and the legislature, the procedures em-oyed in preparing and executing the annual fiscal plan, and the counting and auditing practices. Mr. Buck shows clearly that he s lost none of his enthusiasm for executive budgets.

From descriptions of the French and English systems it is not fficult to appreciate the influences of the budgetary procedures on e fiscal experience in these countries. The English have succeeded avoiding a dissipation of control among various governmental gencies. They have also eliminated the unnecessarily lengthy or rly preparation and legislative discussion periods. Equally the ritish system does not provide for the delayed audits. These would il to give those preparing the new budget the benefits of recent perience. It is unfortunate that the recent major reforms in the

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French budgetary procedure and the report of the Parliamenta Commission upon which the modifications were based, were not know at the time of the author's study. Mr. Buck as well as all oth students of French finances have had at least one of their problen simplified by the elimination of the postponed closings of the year accounts, the *exercices.*

Mr. Buck devotes some attention to the budget systems of small countries, where the absence of internal or external credit has force the introduction of highly practicable and efficient procedure Throughout, the study proves that the author is intimately acquainte with the actual practices and customs as well as the literatur Hardly any other phase of governmental activity is maintained wi such a high disregard for statutory requirements as the preparatic and execution of the budget. Without the benefit of having viewe at first hand the operation of many of the systems, the author woul not have been able to interpret his problems so clearly.

The federal budget system of the United States is dealt with length. Mr. Buck concludes that the American procedure is in urge need of reform;—specifically he advocates "(1) Provisions for e tending the authority of the executive in the formulation and ex cution of the budget; (2) establishment of means of cooperatic between the executive and the legislature in budget-making; (3) rea justment of legislative organization and procedure for handling tl budget; (4) improvement in the form and set-up of the budget doc ment and a closer tie-in of the self-supporting public enterpris with the general budget; (5) financial reorganization in the admi istration to enable the executive to control the carrying out of tl budget; and (6) installation of the audit and review necessary legislative enforcement of executive accountability for the budget (p. 305). Since the publication of his book the author has bee appointed Technical Adviser to the Federal Bureau of the Budge He has already been instrumental in instituting the changes he adv cated with respect to the form of the budget document and the pr sentation of the finances of the permanent self-supporting financi agencies. To Mr. Buck belongs a high measure of praise for h work in aiding in the preparation of the 1936 budget document.

Other reforms desired by the author must await congression action. It is improbable that much progress can be anticipated unt a change of attitude occurs, one which will lend itself to a mo serious consideration of government expenditures. When our Budg and Accounting Act was originally adopted interest in economy w

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ıch that the free distribution of garden seeds by the government was ɔnsidered a major extravagance.

The book possesses an excellent bibliography (pp. 313-332). uture editions could be slightly improved by the inclusion of the nportant studies of ex-Finance Minister de Stefani of Italy and of rofessor Myrdal of Sweden on the budget systems of their respec-ve countries.

The author has made an outstanding contribution to the literature n the financial administrations of national governments. Students f political science and of public finance will welcome it heartily.

J. WILNER SUNDELSON

COLUMBIA UNIVERSITY

'he Principles and Problems of Federal Finance. By BHAL-CHANDRA P. ADARKAR. London, P. S. King & Son, Ltd., 1933. —xviii, 301 pp. 12 s. 6 d.

Professor Adarkar states the view, supported in a Foreword by ir Cecil Kisch, that there is nothing peculiar about the principles f federal finance, but that a federal state necessitates certain fiscal rrangements not required in a unitary state.

The volume is divided into three discrete parts. The first part pages 1-58) concerns the "Constitutional Foundations" of the fed-ral state. While this discussion is brief, it nevertheless develops n a satisfactory fashion the essential elements in the financial rrangements of the federal state. In stating the "guiding prin-iples of the law of the taxing power" the author singles out a umber of significant federal characteristics: (a) uniformity as be-ween states; (b) freedom of interstate commerce, particularly from liscriminatory tax levies; (c) independent fiscal authority of the ıdividual states; (d) limitation of the inclusiveness of state taxing ɔower; and (e) reciprocal immunity of governmental instrumentali-ies from taxation. Adarkar believes essential a tribunal that may eview the constitutionality of legislation, though he does point out hat in Switzerland judicial authority does not extend to the review f central legislation.

Part II (pages 59-184) is devoted to the "Financial Systems of ɹeading Federations", including the United States, Germany, ɔwitzerland, Canada, Australia, South Africa and India. The ex-mination of the finances of these various federal and near-federal tates does not purport to be complete; it is, rather, a sketch dealing argely with the technical financial arrangements and with the dis-

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tribution of authority between the central and state governments (which these arrangements depend. In general, each discussion cor prises an examination of the constitutional situation, a running outli of the historical development, an analysis of the relationships b tween the federal government and the states, and a summary ar criticism of the results. If one may accept the discussion of tl United States as a fair sample, the general survey is remarkab accurate in its main outlines, in spite of a number of misinterpret tions of detail, such, for example, as the assumption that establis ing the national banking system during the Civil War constitute initiating a central bank (p. 176), or that the litigation arising und the due process clause of the Fourteenth Amendment is "obvious a matter for dispute between the governments concerned" and or not properly involving the rights of private taxpayers (pp. 65, 217 While the author has included numerous references to literatu consulted, he gives no evidence of having examined either the *Ta Magazine* or the *Bulletin* of the National Tax Association, the tw leading tax journals of the United States. In certain cases, fc example in chapter viii dealing with the Commonwealth of Australi these are repetitions.

Part III (pp. 185-282) is devoted to "Principles and Problems of federal finance. The author attempts a brief statement of certai principles of public finance and essays the task of applying the principles to federal problems. That public finance is essentiall a problem of transferring purchasing power from one group to ar other is accepted as the principle having most to do with federa finance. Whereas in his opinion the principle of transference pe vades public finance in the sense that the purchasing power of ta payers is utilized to secure goods and services designed to benefit less prosperous part of the population, there is in the case of federa finance also a geographical aspect. The federal state must cor sider the extent to which the purchasing power of the rich provinc shall be utilized for the benefit of the poorer neighbor and mus develop technique to effect the transfer. Adarkar believes that "ta able capacity" and "relative taxable capacity" are meaningless term since the problem of finance is essentially a problem of transferenc involving the collection of revenue and the purchasing of goverr mental services. The extent to which a state may tax is not measure by any objective indices of taxable capacity, but rather by the exter to which it desires to purchase services through government rathe than through individual initiative. This is conditioned, of course

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/ the general attitude of the people, by the excellence of their admin-trative system, and by other factors. The true limiting principle, ıen, is that of the "optimum" in public finance. Examining the roblems of federal finance thus, the author reaches the conclusion ıat there are at least three features which must characterize the nancial arrangements in a federal state if the plan is to operate noothly and effectively. In the first place, the individual states ıust have a measure of financial independence; otherwise they lack nancial responsibility, which is a concomitant of independent exer-ise of taxing power. In the second place, the distribution of evenue resources between the central and the provincial govern-ıents must be such that the essential needs are met both as to the nount of revenue necessary to balance average expenditure require-ıents and as to supplying elasticity necessary for meeting unusual eeds. In the third place, the arrangement must be such as to render easible a reasonable measure of administrative efficiency. Professor .darkar points out that these principles, while not necessarily onflicting, are certainly not always parallel.

A useful feature of the book is the selected bibliography of general orks dealing with federal finance and of "Articles, Collaborations, eports, Yearbooks, etc." concerning the same matter. The author s to be particularly congratulated on the care with which he has hosen significant public documents relating to the federal problems f public finance; though certain important reports for the United tates are conspicuous by their absence. There is a usable index.

JAMES W. MARTIN

INTERSTATE COMMISSION ON
CONFLICTING TAXATION

'heodore Roosevelt and the Japanese-American Crises. By THOMAS A. BAILEY. Stanford University, Stanford University Press; London, Humphrey Milford and Oxford University Press, 1934.—x, 353 pp. $3.00.

The scope of this well-written and carefully documented study is efined in the sub-title, "an account of the international complica-ons arising from the race problem on the Pacific Coast". Thus efined, the crises discussed center around the San Francisco School uestion of 1906. The analysis, however, involves consideration of ıe various factors back of the anti-Japanese feeling which expressed ıemselves in the segregation order. These, as they are considered y Professor Bailey, tend to resolve themselves into the major factor

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of racial antipathy. This does not preclude recognition of tl economic forces at work to produce friction, but it brings them in subordination to the racial problem. Back of the school questic was the much larger one of Japanese immigration, and the desire (the Californians to secure its limitation. After an initial disapprov of the California position, President Roosevelt, it is shown, can to an acceptance of the soundness of the view that Japanese ent into this country should be rigidly controlled. This did not, howeve bring him over to the California position as to the methods of dealir with the problem. These involved, in addition to the school legisl tion which focused the attention of the nation on the question, ant Japanese riots and discriminatory legislation. All of this, as Pres dent Roosevelt pointed out, would have secured the minimum (results, so far as the major question was concerned, with the maximu of friction. His policy, on the other hand, was directed towa securing results on the immigration question with the minimum (friction. This was finally accomplished by means of the Gentl men's Agreement. His methods in dealing with California, invol ing the bringing of pressure to bear on the San Francisco Scho Board, the governor and the legislature, were somewhat unusual, an had the occasional effect of stiffening the attitude of the Californian But on the whole, the author concludes, they were effective. So fa as Japan was concerned, his methods were directed toward convin ing the Japanese of his intention of doing them absolute justice, s far as he had the power, but at the same time of protecting the in terests of the United States. The second aspect of his policy finall became uppermost as Roosevelt became convinced that the Japane underrated the strength of this country. This was partially respo sible for his decision to send the Battle Fleet around the worl That venture, questionable as it appeared to be to many, seemed t be justified by the result since it served to relieve the tension betwee the two countries instead of increasing it.

One thing which emerges from a reading of Professor Bailey volume is the intrinsic smallness of the issues out of which ma come serious contemplation, in responsible quarters, of war. It made apparent that the school question was a minor one, even in th opinion of San Franciscans, and yet, partly through its advertisemer on account of the measures taken by President Roosevelt to sett it, but even more because of its magnification by the press in bot countries, it seriously disturbed the relations of the United Stat and Japan, leading to talk of war. Of even less importance we

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e events which produced the war scare of 1907. In the latter case, pecially, the conclusion seems to be warranted that if war had come would have resulted from constant prediction rather than from use. Much of the fodder, incidentally, the author reveals to have en supplied through German diplomacy, although American officers so supplied materials helping to build up the "inevitability" attide. Fortunately, the President discounted much of this evidence, least until after the war scare had subsided. The author, however, gives some reason to believe that the President's interest in the ilding-up of the navy was one reason for an emphasis on the ssibility of war with Japan. The justification of the predictions, so, would have appeared to a greater extent if the other area of merican-Japanese friction—Manchuria—had been brought into the scussion. The conflicts of policy there were of more serious conrn to Japan than were those over the questions discussed. They ere also of more immediate interest to the United States, except for e Californians. The complete picture of American-Japanese relaons during the Roosevelt period will not be presented, in the opinion the reviewer, until the Far Eastern and the immigration questions e studied in conjunction. This suggestion, however, should not be ken as a criticism of Professor Bailey's book since he deliberately stricted himself to a study of the implications of the race question the Pacific Coast. That he has done carefully and critically, ereby adding a volume of distinct merit to the list of volumes dealg with subjects of diplomatic significance.

HAROLD M. VINACKE

UNIVERSITY OF CINCINNATI

owards Stability: The Problem of Economic Balance. By SUMNER H. SLICHTER. New York, Henry Holt and Company, 1934.—xi, 211 pp. $2.00.

From the point of view of political science the most interesting spect of this incisive book is its conclusion that it will probably rove extremely difficult to reconcile the demand of the mass of oters for security, work and sufficiency, with the conditions which re necessary to maintain capitalism. For capitalism, this author ghtly points out, implies arrangements under which "the stability f production and employment depends upon the stability of profit rospects." And the outlook is that "neither wage earners nor armers (a majority of voters) are likely to feel that the stabilization f profits is of special concern to them."

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Hence the further conclusion, stated with academic coolness- " when one examines the conditions which are necessary in order t maintain production and employment under capitalism one is led t question whether capitalism is worth keeping. . . . One cannot avoi asking whether it is wise to have the maintenance of production, an hence the standard of living, upon such a narrow and precariou foundation as the prospects of profit."

These ultimate observations follow upon a closely reasoned an logically shrewd analysis of the causes and proposed ways of con trolling business depressions, ending with a commentary upon th responsibility of economic planning under capitalism and the nee for changes in " our obsolete constitution ". The summary sentenc of the former discussion is " that under planned production social ism would be necessary." And respecting constitutional difficulties Professor Slichter's conclusions deserve serious study.

The burden of the major argument of the book centers aroun the need for rapid flexibility in the costs of doing business if de pressions are to be mitigated in duration and intensity. Unless suc quick readjustment of costs, interest rates, rents and particularl wages is possible " there is little hope of achieving approximat stability of profits and, therefore, of the volume of business spend ing, production, and employment."

Insistence upon wage reduction as a basic requirement of busines resumption is recurrent. But the qualification of this thesis is on that it all too likely to be lost to view by many readers. Professo Slichter adds here that it is essential that " wage cuts be accompanie by positive support of markets, and an increase in government spend ing or the payment of unemployment benefits to assure that the cut are not too completely translated into lower (non-profitable) prices." It is the fulfilment of these supplementary condition which becomes of questionable expediency and thus leaves the autho doubtful about the possibility of securing stability under capitalism And although he does not emphasize them as he might, he implie that the present institutional rigidities in the economic structure— in costs, overhead, wages, interest rates, etc.—are hurdles which are exceedingly difficult to surmount.

This book would, in short, leave the reader in a well-nigh despairing state of mind were it not for the ray of hope it holds out with respect to the possible superior value of an economic system which discarded the profit criterion as controlling.

ORDWAY TEAD

NEW YORK CITY

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BOOK NOTES

In *The Irish Free State* (New York, The Macmillan Company, 1934; 344 pp. $4.75) an able young Irish scholar, Nicholas Mansergh, examines the development of government in his country since the establishment of the Free State in 1922. His volume supplements Dr. Leo Kohn's valuable analysis of the Free State constitution which was published two or three years ago. Mr. Mansergh's opinions rest upon solid foundations of fact, and though he is evidently a public-spirited Irish citizen, his interpretations are gratifyingly free from patriotic bias. An outstanding feature of the history which he has to relate is the extent to which events have failed to justify the anticipations and hopes of the framers of the constitution. For example, proportional representation was intended not only to secure a more accurate reflection in the Dail of party divisions in the electorate than is given by the system of plurality election of candidates in single-member constituencies, such as exists in Great Britain and the United States, but also to favor a multiplicity of parties; in fact the number of parties has dwindled. Again, the provision of the constitution authorizing the appointment of "extern" ministers has become a dead letter, as such ministers are not appointed. It could be wished that Mr. Mansergh had been more outspoken about the Constitution (Removal of Oath) Act of 1933, which not only deleted from the constitution all provisions relative to the oath required to be taken by members of the Free State legislature but also deleted from the Constituent Act of 1922 the section making the Anglo-Irish Treaty of 1921 the supreme law of the Irish Free State. Since the passing of this act it is no longer possible for the courts of the Free State, as Mr. Mansergh says, "to declare Irish legislation invalid on the ground that it contravenes the terms of the Treaty". I have seen no satisfactory answer to the objection raised by Dr. A. Berriedale Keith to the Constitution Act of 1933 while it was pending: "The Parliament of the Free State owes its existence in Irish eyes solely to the activity of the Constituent Assembly; that Assembly representing the will of the people of Ireland deliberately limited the constituent power of the Parliament, but its creation now asserts that it is entitled to act as a fully sovereign power and to dis-

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regard the essential conditions of its operation. . . . It is importan to note that no question of imperial control is involved. The Statut of Westminster clearly gives the Irish Parliament right to act withou regard to the Imperial Act of 1922 establishing the Irish constitu tion; the point is the Irish constitution itself, and no intelligibl argument on legal grounds to defend the proposal of Mr. De Valer has been adduced. The objection that a treaty should not be mad part of municipal law is clearly irrelevant; the point is that it ha been made part of that law by a Constituent Assembly to which th Irish Parliament on Irish theory owes its being, and by which it wa accorded only limited powers."—R. L. SCHUYLER.

If there be such a thing as " law in history ", surely one may speal of a law of continuing interest in Spain's American possessions on th part of her European neighbors. This interest may be dated from the time when Columbus planted the standard of Ferdinand and Isabella in the West Indies. As soon as internal conflicts subsided England and France, followed shortly by Holland, undertook to seize for themselves portions of the new oversea empire. Success crowned their efforts in North America and in the West Indies. Long before the end of the seventeenth century, it had ceased to be a question whether Spain could uphold her monopoly in the New World, but whether she could prevent the detested interlopers from seizing still more territory. We know the answer. During the Seven Years' War, to be sure, the tide seemed to turn when Spain acquired Louisiana as a gift from France. She then considered a project for converting this colony into a desert for the protection of Mexico—a striking indication of the fear of renewed attack. Soon thereafter England's oversea empire was disrupted by the successful revolt of the thirteen colonies. This event afforded little relief to Spain. The new nation also threatened the Spanish colonies. More dangerous, however, than threats of conquest was the example set by the United States to the European possessions in America. The revolutionary element in New Spain, who long had chafed under the restrictions imposed by the Madrid government, felt encouraged. They drew further inspiration from the French Revolution. Despite the prohibition of the Church, French books and pamphlets preaching the doctrine of liberty were widely distributed and read in Mexico. Foreign powers spasmodically favored the dissatisfaction. No serious outbreak occurred, however, until Napoleon attempted to compel the Spanish colonists to accept his brother Joseph as their king. This was too much: the war of Mexican Independence began.

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Such, in brief, is the content of Professor John Rydjord's new volume, *Foreign Interest in the Independence of New Spain: An Introduction to the War for Independence* (Durham, Duke University Press, 1935; x, 347 pp. $3.00). The book is divided into eighteen chapters, most of which fall within the period of 1783 to 1810. It is provided with the usual scholarly accoutrements of the carefully prepared study—ample footnotes (placed as they should be at the bottom of the page), an extensive bibliography, and a full index. Specialists will note the omission of this or that cherished work and the presence of a few factual and typographical errors, but they ought to find consolation in Professor Rydjord's lively style. He obviously enjoyed welding his widely garnered materials into a volume. Yet it must be said that Professor Rydjord could have added to the interest and value of his study by giving more of the European background. He does not, it is true, fall into the error of placing the colonies at the center of the universe and Europe at the periphery, as writers on colonial history have been accused of doing, but he neglects to explain sufficiently why statesmen in the period of the French Revolution and Napoleon paid comparatively little practical attention to Spain's mainland colonies. Those regions were to them, it appears, what South America was to Hamilton—something far off to be "squinted" at pending the course of events. Meanwhile they expended their resources elsewhere, in regions closer at hand—in Europe, in St. Domingue, in Egypt. Thus, despite all the efforts of Miranda and his associates, the Mexicans were obliged to start their revolution without foreign aid.—CARL LUDWIG LOKKE, The National Archives, Washington, D. C.

Spanish importation of gold and silver from America was one of the most important phases of sixteenth and seventeenth century history. American treasure had much to do with the development of modern capitalism, the rise of prices, and a myriad of other economic and social changes. Yet, until the publication of Professor Earl J. Hamilton's volume on *American Treasure and the Price Revolution in Spain, 1501-1650* (Cambridge, Harvard University Press, 1934; xxxv, 428 pp. $4.50) no accurate statement had been made of the amounts of precious metals brought from the New World and no detailed analysis had been attempted of price inflation. Many writers, including Alexander von Humboldt, had estimated the quantity of the treasure, but they arrived at sums that exceed Hamilton's by from two to ten times. Several observers, the first of whom was probably Jean Bodin, had explained the price revolution on the

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grounds of an increased supply of bullion, but they were inaccurate and were unable or failed to make use of present-day economic technique, notably of the index figure. Because of these facts, Professor Hamilton's work, based as it is on six years of industrious effort, careful procedure, and three million separate computations (p. xii), should be warmly welcomed by historians and economists. The book begins with a consideration of the importation of bullion from America and the effect of the supply of precious metals on coinage. From 1503 to 1660, some 447,820,932 pesos of gold and silver were brought to Spain, the peak of influx being attained in the period 1591-1595. The mint ratio between gold and silver was altered as a result of a greater supply of silver than of gold between the years 1621-1660. After a detailed consideration of these matters, attention turns to price increases that were first evident toward the beginning of the sixteenth century and reached their height in the middle of the seventeenth. The rises occurred first in Andalusia where the silver was landed, but gradually spread over all Spain. Augmentation of prices was accentuated by the decadence of agriculture, industry and commerce, and the remarkable decrease in population. The main theme, American treasure and price changes, is ever before the author, yet frequently he refers to matters of a much broader scope. For example, (p. 304) he states, "the price stability of most commodities formerly produced by Moriscos in the decade following their expulsion suggests that this despicable act of religious intolerance can hardly rank as a major cause of Spanish economic decadence." This and other suggestions may change many of our current concepts of Spanish sixteenth-century history, but they should be worked out in more detail than was possible here. Professor Hamilton has filled a large gap in our knowledge, but he has whetted our curiosity for still further data. We should like to know how much Spanish bullion seeped through the legal barriers to the rest of Europe and what its effect on prices was there. And we desire now, more than ever, analogous studies on the European importation of precious metals *via* Antwerp, Amsterdam and London, and a consideration of their effect on prices in the Netherlands and England.—Shepard B. Clough, Columbia University.

Essays in Our Changing Order, by Thorstein Veblen, and edited by Leon Ardzrooni (New York, The Viking Press, 1934; xviii, 472 pp. $3.00), contains almost all of Veblen's heretofore uncollected papers. Like his previous volume of papers, *The Place of Science in Modern Civilization and Other Essays,* the book exhibits Veblen's

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wide variety of intellectual interests, and their use to bring out the nature of his fundamental distinction between "business" and "industry". The only exception is his first publication, "Kant's Critique of Judgment", written when Veblen was a graduate student at Yale and republished apparently to call attention to Veblen's thorough training in philosophy. Of obvious contemporary interest are his papers, "A Policy of Reconstruction", "The Opportunity of Japan", "The Intellectual Pre-eminence of Jews in Modern Europe", and the review of Keynes' "The Economic Consequences of the Peace". His memoranda for the Food Administration and the House Inquiry also present a number of his constructive proposals for solving underlying economic problems. "The Instinct of Workmanship and the Irksomeness of Labor", "The Beginnings of Ownership", "The Barbarian Status of Women" and "The Economic Theory of Women's Dress" should help to throw considerable light on the meaning of his *Theory of the Leisure Class*. An introduction is provided by the editor, Leon Ardzrooni, former student and colleague of Veblen.—JOSEPH DORFMAN, Columbia University.

The bulky volume entitled *The Bolshevik Revolution, 1917-1918: Documents and Materials* (Hoover War Library Publications No. 3, Stanford University Press, 1934; xii, 735 pp. $6.00) by James Bunyan and H. H. Fisher is an important and substantial contribution to the understanding of the great upheaval which brought about the establishment of the Soviet rule. The period covered is that of the months immediately preceding and following the *coup d'état* of October 1917. The story is told "in the language of decrees, manifestoes, and other public documents, in the words of participants and observers, and in the reports of the contemporary press." These documents and comments are carefully selected from a huge mountain of historical evidence; they are unusually well translated and are woven into a surprisingly smooth narrative which gives a most vivid and informative picture of this decisive turn in the history of modern Russia. The need for a documentary history of the type undertaken by Mr. Bunyan and Professor Fisher has been greatly increased by the continuous growth in the volume of historical material which is, moreover, available in relatively few libraries and only to students familiar with the Russian language. Although the content of the volume under review is largely derived from printed Russian sources, nevertheless, the reader conversant with the Russian language has every reason to be grateful for the new publication of the Hoover War Library. It puts at his disposal in a convenient

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and accessible form a vast range of documentary information whic could be obtained only from the original sources after months an years of patient research. The volume is invaluable to the mo serious-minded students of Russia who have not acquired an adequa knowledge of the Russian language. The preparation of a doc mentary history of the Bolshevik Revolution involves not only muc labor but also grave responsibilities. On the selection of the doc ments depends the importance assigned to the different factors an an overemphasis on any particular question is apt to distort the who picture. In the opinion of the reviewer, Mr. Bunyan and Professc Fisher have performed their laborious and delicate task with admi able objectivity and complete success. All the essential problen of the crowded period of revolutionary struggle are faithfully rep resented by significant and telling documents. The two last chapte are perhaps of particular interest and importance. They deal wit the program of the Communist Party, the Red Army, the Cheka an the Courts, the Church, education, financial policies, industry, coöp erative organizations, trade unions, food supply and the land prob lem. But no one interested in the Russian Revolution can possibl afford to ignore the story of the political struggle which led to th triumph of the Soviets, a story which is graphically told in th earlier chapters. All documents are carefully annotated. Th volume is provided with a useful chronology of the chief events fron February 1917 to April 1918 and a helpful index.—MICHAEL T FLORINSKY, Columbia University.

When the German labor courts were set up on a nation-wide scal by the law of December 23, 1926, lawyers were specifically excluded from appearing on behalf of either complainant or defendant, unles retained as *syndicus* on a full-time basis by one of the parties. Th trade unions, which had been the chief backers of the law, contended that organized workers would receive adequate help from their unio in the matter of representation and that unorganized workers shoulc join the union. Admission of lawyers, they urged, would defea the main purpose of the law, which was to furnish a cheap, quick and readily available means of enforcing the rapidly growing law of employment relations. The unions adhered firmly to their posi tion for six years after the establishment of the courts, and the em ployers' organizations just as consistently continued to urge that lawyers should be permitted to represent clients before the labo courts. It became evident early that there was a fairly large group of unorganized workers who for one reason or another were not

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getting help from the union of their trade in appearing before the courts, and the employers of course espoused the cause of the unorganized worker with zeal. More dust was raised over this question than over any other connected with the system of labor courts. Dr. Herbert Herzog prepared in pre-Hitler days a scholarly treatise, *Die Vertretung der Parteien vor den Arbeitsgerichten im Deutschen Reiche und im übrigen Europa* (Berlin, Carl Heymanns, 1934; viii, 299 pp.) setting forth the status of the controversy and giving details on the practice of other European countries. Before it was published, Hitler seized power and swept away the unions. Dr. Herzog published the book anyway, but it has interest today for a limited group of readers—foreigners who contemplate learning from the German experience, which is adequately described; Germans who expect that liberal capitalism will some day be restored in Germany and that the labor courts can then resume their former vitality on the old basis; and historians. It should be remarked that Hitler did not abolish the labor courts—an indication of how much they were appreciated by the workers. But he did abolish their effectiveness when he destroyed the unions, and he has since set up a system of "honor" courts to limit still further the scope of the labor courts. Dr. Herzog's conclusion is that lawyers should be admitted to plead before the labor courts, but the conclusion does not seem to follow from the evidence he presents; indeed he goes so far as to concede that it was a good thing for the labor courts that they grew up without benefit of lawyers and established precedents of direct pleading. The book brings the story down to October 1933.—HORACE B. DAVIS, Bradford Junior College.

In his latest book, *Exchange Control* (New York and London, The Macmillan Co., 1934; ix, 195 pp. $3.00), Dr. Paul Einzig gives an orderly presentation of questions which have often been the subject of controversy and even of confusion, but which have not hitherto been systematically discussed at length in English. All exchange bankers and all monetary economists will therefore wish to read this book. They are likely, however, to put it down with the further wish that Dr. Einzig had used his special knowledge and ability to make a substantially longer and more detailed study. Like a number of his other publications, the present volume is written easily, perhaps even hastily, but one does not feel that it really goes to the bottom of any one of the problems examined. The summaries of factual material are useful, yet so brief as to be not much more than allusory (the complexities of the German blocked marks, for example, are

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dismissed in two or three pages, with almost no distinguishing dates) The discussions of the broader effects of exchange control are simi larly so short as to be in largest part only recapitulations of familia propositions. Dr. Einzig's general view is that many forms of ex change control are undesirable, but are nevertheless likely to persis as long as world trade and finance remain under pressure, and t be revived when the next crisis develops. Indeed, he treats exchang control in general with much less than the customary disfavor, anc at times (as in chap. viii) comes close to implying that it can be substitute for more general monetary and banking measures. Direc intervention he regards, like most students today, as a proper per manent tool for offsetting short-period fluctuations in the exchanges but not for combating substantial enduring shifts in relative inter national financial position. His real enthusiasm is for internationa exchange clearing, which dispenses entirely with the exchange market as such; this he thinks is the rational ideal which will become the practical system of the future. It is doubtful, however, if most econ omists will agree. The great defect of exchange clearing is that it offers in itself no machinery for correcting a persistent excess of transactions and payments in either direction. It hence gives nc protection to traders against a wide movement of the exchanges tc some new but still non-permanent level, after the expiration of the currently operating clearing agreements (which have usually run for only a few months at a time); and no assurance that uncleared bal ances can later be transferred without disastrous losses. It is especi ally difficult to see how sustained international investment operations could be carried on, except to the extent (ordinarily limited) that "tying clauses" were employed. Devices to overcome these diffi culties would involve such complicated arrangements and so much supervision as to make the familiar type of more or less free exchange market seem preferable. The pre-war system of gold exchanges, though deficient in many respects, at least provided a machinery which made some attempt at correcting payment excesses.—JAMES W. ANGELL.

The abandonment by the United Kingdom in 1931 of its traditional free trade policy is perhaps one of the most revolutionary and dram atic events in the economic history of a post-war world which is certainly not suffering from any lack of momentous developments. It is a fact of common knowledge that imperial preference played a by no means unimportant part in bringing about this fateful change in British commercial policies. This is why one turns with consid-

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rable expectation to *British Imperial Preference in Relation to ustralia* (Washington, The Catholic University of America, 1934; iii, 90 pp.), a dissertation by the Reverend Vincent F. Cleary, in ıe hope of finding some new light on the effects of imperial prefernce on Australia. Unfortunately, these hopes are doomed to comlete disappointment. The dissertation is a dreary and bare outline f the official history of imperial preference and consists chiefly of ften inadequate and always uninspired summaries of official acts and greements with a flimsy sprinkling of economic commonplaces borowed from the reports of the United States Tariff Commission and few magazine articles. The economic background and the movenent of ideas which brought about the Ottawa Conference are comletely lacking. The moment the author abandons the Year Books nd Acts of Parliament he does not seem to be sure of his ground. He says, for instance, that "in *economic* matters the Dominions are ow *practically* independent nations." What is the meaning of this ualification and what makes Dr. Cleary doubt the independence of he Dominions? The crucial event in the policy of imperial prefernce is, of course, the Ottawa Conference. In spite of this obvious act Dr. Cleary's analysis of the effect of imperial preference upon Australia is based on the trade returns of 1924-1927. He gives no eason for the selection of this period and none is obvious. The disertation was approved for publication on May 28, 1934. Only a ew months later, on November 3, 1934, the London *Economist* pubished as a Special Supplement an admirable study by Sir George Schuster, *The Empire Trade before and after Ottawa,* which reaches ome necessarily tentative but also highly suggestive and significant conclusions on the effect of the Ottawa agreements. So the task is ı feasible one. Devoid of a proper statistical foundation and dirorced from the great currents of ideas and economic trends of the British Empire, Dr. Cleary's venture is merely a "partial fulfillment of the requirements for the degree of Doctor of Philosophy".—MICHAEL T. FLORINSKY, Columbia University.

The history of European and American relations with the Barbary States in recent times is a field of research to which comparatively little attention has been devoted by American historians. Accordingly, students of the history of diplomacy, of the "expansion of Europe", and of international law, will learn with satisfaction of the appearance of Professor Earl Fee Cruickshank's monograph, *Morocco at the Parting of the Ways: The Story of Native Protection to 1885* (Philadelphia, University of Pennsylvania Press; London,

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Humphrey Milford, Oxford University Press, 1935; xxv, 238 pp $2.50). "Protection" is defined as "a juridical bond which attache a subject of one state to another, entitling him to claim certain right and privileges enjoyed by the nationals of the second without, how ever, actually changing his nationality." In this connection it mus be recalled that "the rights and privileges enjoyed by the nationals of European and American powers in Morocco were similar to right possessed by nationals of those powers in Turkey, China and othe Oriental states. The volume opens with an account of the policie pursued toward Morocco in the early and middle nineteenth centur by the powers having the chief interests in that country, namely Great Britain, France and Spain. A chapter is devoted to the origin of the protection system and its development to about 1875. An ac count is then given of the operation of the system as it was at th date mentioned, and the effect which it had in detaching subjects o the Sultan from their allegiance and in contributing toward th gradual decadence of the Moroccan administrative organization. I is the theory of the author—a theory which might have been mor adequately buttressed with supporting facts—that about 1875 Mo rocco stood at "the parting of the ways": if she failed to arrest th decay of her economic and political institutions and continued t submit to the encroachments of the foreign powers, she must event ually be overwhelmed by the rising tide of European imperialism yet she still might conceivably have saved herself from this fate by proper measures of reform, of which the first and possibly the mos essential was a sweeping modification of the system of protection Consequently, the story of the negotiations beginning in 187 regarding such proposed reforms, occupies more than half the volume. These negotiations, which were due largely to the zeal of Sir John Drummond Hay, the British minister at Tangier, culminated in the international Conference at Madrid in 1880. While Great Britain held the leadership in the reform movement, she received, except at the opening of the negotiations, the cordial support of Spain. However, the opposition to reform, which came from France and Italy, with the support, during the Conference, of Germany and Austria-Hungary, was so strong as to defeat the enactment of the more important measures proposed. In a concluding chapter, the author narrates briefly—possibly a little too briefly—the aftermath of the Conference, showing that what little was gained by its work was largely nullified by the failure to implement the more important provisions of the Convention which it had formulated, that, more-

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'er, the system of protection was now rapidly extended and used ore than ever before for the increase of the political influence of e powers, especially France, in Morocco. Thus the way was pre- ıred for the events of the pre-war decade. The book is the fruit of :tensive investigation in the archives of Spain, Great Britain and the nited States, together with an examination of apparently all the :inted documentary and secondary material in existence. The style for the most part clear and readable. In a few cases there are pass- ges which are rendered obscure by the use of proper names without ıfficient explanation, and here and there is a sentence which might ıve been improved by a little polishing. In some instances conflict- g opinions are presented with reference to important aspects of the ıbject without sufficient information to enable the reader to reach s own conclusion regarding the matters in question. There is a ngthy bibliography and a useful index.—F. R. FLOURNOY, Wash- gton, D. C.

Johan Plesner's *L'Émigration de la campagne à la ville libre de lorence au XIIIe siècle* (Copenhagen, Gyldendalske Boghandel, ordisk Forlag, 1934; xvi, 240 pp.), a translation from the Danish anuscript by F. Gleizal in collaboration with the author, is an in- resting dissertation from the University of Copenhagen. The ıthor delivers a frontal attack on the traditional belief that the alian towns, with Florence as the archetype, achieved one of their ost significant successes in the conquest of the countryside by the ms and financial power of the bourgeois at the expense of the ɔbles. The supposed inherent and inevitable antagonism between ıe two classes, and the consequent struggle born of this conflict of ıterest, has not been questioned until recently and then only by ıe lectures and publications of the Russian scholar Nicola Ottokar, ɔr some years now professor at the University of Florence. Under ıe influence of Ottokar's stimulating ideas Plesner has undertaken to isprove the traditional view, so far as Florence is concerned, by an ıtensive critical combing of all the documentary evidence, much of unprinted and hitherto not utilized, by examination of the terrain ıd of the surviving *castelli,* and also by the use of fifteenth-century ictorial representations of the Tuscan *contado.* By following the istory of many families of lesser rank for generations, by tracing ınd titles in several areas in the environs of Florence, he has demon- rated that the town grew largely by the emigration to the free ɔwn of freemen and peasants not bound to the soil from the *castelli* ıd villages round about; he shows that they did not thereby sur-

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render their rural holdings but in general maintained their conta with the soil from which they sprang and whence they continued derive a portion of their livelihood while participating in the econom development of the town by investment in industry and trade. Tl work rests at bottom upon the author's acceptance of Ottokar's co cept of town and *contado* as an ancient unit, identical with the o Roman *civitas* and the bishopric, regarding this unity not as an hi torical curiosity but as an historical continuity. To achieve his ai Plesner has begun by presenting for the first time a clear picture of tl Italian *castello* in its social and economic aspects and he has theret made a distinct contribution. In so doing he took a lead from tl work of Feodor Schneider (*Die Entstehung von Burg und Landg meinde in Italien,* Berlin, 1924) but from whom he shortly depar with the purpose of proving that until toward the year 1300 tl *castelli* were only fortified villages, that the private castles in the tr ditional sense were a late development through the transformation (the bourgade into a family fortress. This was brought about by long slow process of purchase of the holdings within the fortificatio in part, as the more enterprising tenants emigrated to the town, or t exchanges, as the suzerain steadily took advantage of his erstwhi authority to become a great private proprietor. Rejecting what h properly regards as an unjustifiable method pursued by more than or of his predecessors in the field from Davidsohn and Villari to Cagges he eschews the citation of mere episodes and of casually selected illu trations in order to achieve a synthesis based on the close analysis c all the surviving evidence. The strength of the book lies in th arrival at interesting conclusions founded on this penetrating an critical method, conclusions which seem certain to cause the modif cation of many hitherto accepted views. The chief of the few weak nesses in the book lies in the fact that satisfactory evidence for th support of the author's contention has thus far only been secure for the relationship of a few of the *castelli* and their inhabitants t the town, but further research may enable the author to expand th application of his thesis. On the whole he has presented a new in terpretation of an important phase of social and economic histor The work is authoritative. It deals some hard blows at more tha one assumption which he regards as sheer legend. The applicatio of his methods and concepts to towns other than Florence should b productive of a more complete comprehension of the growth of th medieval town and of its real relation to the countryside. It is pity that the translation from the Danish was not made into a Frenc

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ess baffling in many passages and more readable in all.—EUGENE H. BYRNE, Columbia University.

Those people who believe that social history is at its best no more han a compilation of interesting and disconnected facts uninformed by a philosophy which supplies meaning, and that local history nerely represents antiquarian and genealogical interests, will do well o examine rather closely *The Treatment of Poverty in Cambridgehire, 1597-1834* (Cambridge, The University Press, 1934; xx, 308 p. 15s.; New York, The Macmillan Co., $5.25) by E. M. Hampon. This volume, one of the Cambridge Studies in Economic History under the general editorial direction of J. H. Clapham, eveals that, although social historians can scarcely rely upon such onvenient formulae as those often adopted by economic or political istorians of the narrower sort, social history may have a sound oint of view and a sequential narrative. Moreover, it also tends o reveal that the formulae in vogue among institutional historians re more frequently marked by facility than by veracity. Conducting her investigations in the vestry books and papers of about fifty arishes, Miss Hampson has thrown light upon nearly every phase f social history. While her conclusions, as Professor Clapham sugests, may not shift existing judgments a great deal, they do supply he concrete and solid materials for a more exact appreciation of he state of affairs. Although she has cast her net in a limited rea geographically Miss Hampson's catch has not been limited to ne species. Questions of morality, social attitudes, education, the ariations between agricultural and urban districts, and penology, n addition to the anticipated problems of pauperism and employent, have been caught within her net. The county itself offered xcellent opportunities for studying the multiform aspects of poor elief, because of its large squatter settlement, its late enclosure ovement, the presence of the Stourbridge Fair and the university own, and the proximity to large urban centers. The volume achieves n additional compactness by being essentially an analysis of the lizabethan Poor Law and its administration; its value, however, ight be somewhat enhanced by a fuller study of poor relief in ambridgeshire before 1597 than is provided in the first chapter nd by an examination of the period since the act of 1834. Morever, it can be said that Miss Hampson appears to be rather too lose to her materials. Her book lacks perspective not only in time ut in presentation, and thus her picture is somewhat cluttered. evertheless, there is no denying that the volume is a valuable con-

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tribution to social history, a welcome departure from facile generalization, and an excellent illustration of the genuine worth of local history. An extensive bibliography, unfortunately marred by petty errors, increases the usefulness of the book, which may well become both the inspiration and the guide to similar studies.—CHARLES F MULLETT, University of Missouri.

In a highly compact study of *The Oriental Origin of Hellenistic Kingship* (Chicago, The University of Chicago Press, 1934; xii 34 pp. $1.00), Mr. Calvin W. McEwan sets forth the view that the Hellenistic ruler-cults were derived from the older traditions of the Near East, and not from Greece. In the ancient Orient divine kingship was normal. The evidence for the existence of this institution in Pharaonic Egypt, Mesopotamia (from the third millennium B. C.), and Assyria is conclusive, though for the Hittites Hebrews and Cretans incontrovertible confirmation is lacking. But it is Achaemenid Persia that is crucial, since it provided the model for Alexander's empire; and the author contends that king-worship must be admitted for Cyrus and his successors. Mr. McEwan has established his first lemma: Hellenistic ruler-worship continued ancient Oriental practice (especially Egyptian and Babylonian). However, he is not equally successful in his treatment of the Hellenic background. He agrees "that the Greeks were accustomed to pay *post mortem* homage to city-founders and other distinguished benefactors and philanthropists, and that a few men in the Greek world had received *ante mortem* heroic or divine honors" (p. 24). Is it sound procedure to dismiss this significant evidence of a developing institution by the curious assertion that "deification was not normal in Greece"; or by the application of the question-begging epithet "non-Hellenic"? By refusing to recognize Greek elements in the Hellenistic ruler-cults, Mr. McEwan is guilty of an error equal and opposite to that committed by the writers whom he quite properly charges with indifference to the Oriental background of Greek history. —EDWARD ROSEN, College of the City of New York.

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